

OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

APRIL 20, 2010

10:00 A.M. - 2:00 P.M.

JOINT SESSION

LOS ANGELES, CALIFORNIA  
SACRAMENTO, CALIFORNIA

Official Transcriber: Terri Cohen

**COMMITTEE MEMBERS PRESENT:****NORTHERN CALIFORNIA**

ROBERTA SAVAGE, Chairperson  
TAMARA BROCK  
CARL CORBIN  
DORA DOME  
CHRISTIAN KNOX  
ELIZA MCARTHUR  
STEPHEN ROSENBAUM  
KATIE RUSSELL

**SOUTHERN CALIFORNIA**

JONATHAN READ, Chairperson  
JODI BYNDER  
DANIEL HARBOTTLE  
INES KUPERSCHMIT  
CONSTANCE TAYLOR  
STEVEN WYNER

**COMMITTEE MEMBERS ABSENT:**

SUSAN BURNETT  
KATE CHILCOTE  
PATRICIA GAMBOA-FUENTES  
MELISSA WILLMORE

**ALSO PRESENT:**

JUDGE RICHARD CLARK, Administrative Law Judge  
JUDGE ANN F. MACMURRAY  
JUDGE JUDITH KOPEK  
JUDGE BOB VARMA

<u>INDEX</u>	<u>PAGE</u>
Call to Order and Instructions .....	4
Introductions .....	4-6
Public Comments .....	66, 117, 135
Adjournment .....	155
Transcriber's Certification .....	156

P R O C E E D I N G S

1  
2           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, it's about  
3 10:10. Let's go ahead and get started here. We're missing a  
4 couple of our Committee members. There's a few people who  
5 aren't here. Melissa Willmore is not going to be here, Dr.  
6 Burnett is not going to be here and Kate Chilcote in  
7 Sacramento is not going to be here this morning. They all  
8 had something come up so they're not going to make it.

9           This is the second yearly meeting of the Advisory  
10 Committee. We're meeting via video conference and webcast.  
11 I'm Richard Clark. I'm the Division Presiding Judge for the  
12 Special Education Division of the Office of Administrative  
13 Hearings. I'm at the at the Los Angeles location with  
14 Presiding Judge Ann MacMurray, from the Van Nuys Office of  
15 Special Education Division. In Sacramento I'm joined by Bob  
16 Varma, who is Administrative Law Judge in Sacramento and by  
17 Presiding Judge Judith Kopek out of the Sacramento office.  
18 Presiding Judge Tim Newlove is actually appearing today so he  
19 won't be here for the meeting.

20           We have an agenda we're going to get started with.  
21 We're going to talk about a few things and give you some  
22 updates. Before we get started I think we should go around  
23 the table and just introduce the Committee members that are  
24 here.

25           In Sacramento we don't need to see everybody on the

1 screen. I think it's just as because of the way the webcast  
2 is in there so I think we can see Roberta but anybody in  
3 front of her we can't see and then we can see Carl. So let's  
4 start in Sacramento and start with you, Roberta, and we'll go  
5 around there.

6 **MS. SAVAGE:** Hold on, we're going to check  
7 something.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.  
9 (Overlapping conversation.)

10 **MS. SAVAGE:** Good morning. My name's Roberta  
11 Savage. I'm a students' attorney up here in Northern  
12 California.

13 **MR. CORBIN:** Carl Corbin, I'm an attorney at  
14 Schools and College Legal Services representing public  
15 agencies.

16 **MS. KNOX:** Christian Knox from Ruderman & Knox,  
17 representing parents.

18 **MS. BROCK:** Tammy Brock. I'm a parent.

19 **MS. DOME:** Dora Dome, I'm with Dannis Woliver &  
20 Kelley (inaudible).

21 **MS. RUSSELL:** And I'm Katie Russell. I'm a parent.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** And then down  
23 here, let's start with you, Jonathan.

24 **MR. READ:** I'm Jonathan Read with Fagen Friedman &  
25 Fulfrost, representing public agencies.

1           **MS. BYNDER:** Jodie Bynder with Newman Aaronson  
2 Vanaman representing parents.

3           **MS. TAYLOR:** Constance Taylor with Atkinson  
4 Andelson, representing school districts.

5           **MR. WYNER:** Steven Wyner with Wyner & Tiffany,  
6 representing parents.

7           **MR. KUPERSCHMIT:** Ines Kuperschmit with Learning  
8 Rights Law Center representing parents.

9           **MR. HARBOTTLE:** And Dan Harbottle, Harbottle Law  
10 Group, representing school districts.

11           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, good morning  
12 and welcome.

13           There's a couple people that I just wanted to  
14 acknowledge and thank before we get started. Samantha  
15 Alfonso is one of the staff members up in Sacramento and the  
16 executive assistant and without her help we wouldn't have  
17 been able to put this all together. She shipped documents  
18 and made sure all the room reservations were made and such so  
19 we appreciate her help. Laura Gutierrez (inaudible) also  
20 helped get this organized today so I appreciate their input.  
21 Also Elizabeth Gransee and the staff from Department of  
22 General Services and Phillip Killian (phonetic) is there as  
23 well and I appreciate their help getting the webcast going  
24 and their technical assistance.

25           There are just a few announcements that I wanted to

1 talk about. It's probably better if I stand up since I'm off  
2 the camera.

3 First off, just generally about the way this  
4 Committee works. It's a little awkward with the video  
5 conferencing and webcast so when you're making a comment it  
6 would be important for you to say your name and just say who  
7 you are and then make whatever comment it is so that  
8 everybody from both Sacramento and Los Angeles and the people  
9 on the webcast know who's talking and can follow the  
10 discussion better.

11 We're going to need someone to be a note taker in  
12 Sacramento and also a note taker in Southern California. I  
13 don't know if you've talked among yourselves and figured that  
14 out this morning but we might take a minute and just figure  
15 out who that's going to be.

16 It's important that we have OAH's feedback from the  
17 Committee in terms of any recommendations that you make so  
18 that we can act on those if appropriate or least respond to  
19 them in writing as well. So have you identified somebody in  
20 Sacramento who is going to be your note taker?

21 **MS. SAVAGE:** We're working on it.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. And how  
23 about here in Southern California?

24 **UNKNOWN FEMALE:** I vote for Christian.

25 (Overlapping conversation.)

1                   **ADMINISTRATIVE LAW JUDGE CLARK:** So it's going to  
2 be in Sacramento Christian Knox?

3                   **MS. KNOX:** Yes.

4                   **ADMINISTRATIVE LAW JUDGE CLARK:** Good. Thank you  
5 very much. And Southern California, thank you both for doing  
6 this.

7                   The most important thing I want to just talk about  
8 briefly is the furloughs. From OAH's perspective they are  
9 still in effect and there's been a lot of litigation. There  
10 was a lot of press coverage. But basically they are on  
11 appeal so OAH is under the furlough and we're still closed  
12 the first three Fridays of the month. That is through June  
13 30<sup>th</sup>. We haven't received any further direction from the  
14 Governor's office if we're going to remain in effect or  
15 whether it will be repealed or not. So we still remain under  
16 furloughs through June 30<sup>th</sup>.

17                   We're still setting prehearing conferences and  
18 trial setting conferences on Mondays and Wednesdays and we're  
19 doing our best to set litigations Tuesday, Wednesday,  
20 Thursday so that we have one day in the office to do the  
21 prehearing conferences and have our judges make the phone  
22 calls on mediations and such. So your help in trying to keep  
23 things to Tuesday, Wednesday and Thursday is appreciated and  
24 (inaudible).

25                   It looks like because of the budget cuts that our

1 Laguna Hills Office of Administrative Hearings office is  
2 likely to close at the end of the (inaudible) so it's just  
3 the end of December 2010 and once we have more information  
4 about that I will get back and I'll put it on our website and  
5 send out information about that. But it looks like that  
6 facility will no longer be available after December 31<sup>st</sup> of  
7 this year. And the judges in that office will probably be  
8 moved to either Van Nuys or to the San Diego office but we're  
9 still working on what that plan will be to close the office.

10           It's unlikely that we would have another government  
11 building in Orange County to hold hearings. We're looking  
12 into that as well but because most of the government  
13 buildings are for sale right now as part of the budget issue  
14 we're not sure where we might be able to hold hearings. But  
15 it's something we're looking into as well and we'll keep you  
16 posted on that.

17           We hired a couple new staff supervisors in the  
18 Sacramento office to help supervise the support staff. Laura  
19 Gutierrez remains the support staff supervisor for the  
20 Special Education unit so if you have any issues or concerns  
21 you can ask for her and contact her.

22           We hired Christina Bruego (phonetic) who is the  
23 supervisor of the general jurisdiction staff in the  
24 Sacramento office and we also hired Cheryl Hill (phonetic)  
25 who is one of the staff service managers over support staff

1 and over the Special Education division as well. And she  
2 recently started.

3 Our office just completed our second set of  
4 training for the fiscal year which we're now in compliance  
5 with the CDE contract requirements to have our 40 hours of  
6 training each year. It was a really good program put on by  
7 Seattle University and it was held in Oakland and our next  
8 training looks like it's going to be the week of October 11<sup>th</sup>  
9 so that's what we're tentatively scheduling at this point.  
10 And we'll get those dates blocked off on the calendar as soon  
11 as we set that as the hearing dates as well.

12 And finally we hired some new ALJs, some new  
13 Administrative Law Judges. We hired some new people in  
14 Sacramento and also in the Van Nuys office. In Sacramento we  
15 hired Lisa O'Brien, Troy Taira and Adeniyi Ayoade and we call  
16 him Wally in Sacramento. And Adrienne Krikorian and June  
17 Lehrman joined the Van Nuys office back in November. So I  
18 just wanted to let you know that those are five new judges  
19 that you'll see handling litigations and hearings. They are  
20 basically in front of all the training and they're going to  
21 be out hearing cases and they (inaudible) you'll be seeing  
22 them more often.

23 I think that basically covers the few updates that  
24 I had. We're ready to jump into the agenda unless anybody  
25 has any questions or concerns before we get started.

1 Otherwise I will --

2 **MS. SAVAGE:** Judge Clark? I have a question --

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes.

4 **MS. SAVAGE:** -- about the office closure.

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes. Roberta  
6 Savage.

7 **MS. SAVAGE:** I'm sorry. This is Roberta. I just  
8 have a question about, is there any -- have you guys looked  
9 at any anticipated impact on the families in Orange County  
10 with respect to closing that office and then separating it  
11 out in terms of distance to -- if there's a case that's going  
12 to be heard at OAH or getting access to staff. Has there  
13 been any kind of look at that?

14 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, we've  
15 examined all the numbers and we've looked at ways to keep  
16 that office open and also looked at private facilities to  
17 hold hearings in Orange County if possible and we're still  
18 exploring those options. So as soon as we know we'll let you  
19 know. But at this point I just know that facility is not  
20 likely to be there after December 31<sup>st</sup>. But we'll still have  
21 a presence in Orange County in terms of doing hearings. We  
22 will still set them up in the Orange County area if  
23 necessary.

24 **MS. SAVAGE:** Okay.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** Any other

1 questions before we get started?

2 In the past we've also had a Chair from each  
3 location. I know it was Jonathan Read last time here in  
4 Southern California. I don't know if you're doing it again  
5 or if you've talked about it.

6 **UNKNOWN MALE:** We've already elected him.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** And in Sacramento  
8 do you have somebody who is your chair? It's good to have  
9 somebody sort of (inaudible) the agenda. Maybe it's good  
10 enough to have Jonathan down here so that's (inaudible) for  
11 our agenda.

12 **MS. SAVAGE:** I'll do it again. I'll be doing it  
13 again, Judge Clark. This is Roberta.

14 **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you. Thank  
15 you, Roberta.

16 The first item on the agenda is just the hearing  
17 process and there are a couple questions from different  
18 people about things that we do and maybe making some changes  
19 so I added that to the agenda. So let's go ahead and just  
20 talk about the first agenda item.

21 So I guess it's -- the first suggestion was that  
22 there be a limit on the total number of page numbers for  
23 filing via faxination. And just as a little bit of  
24 background for people listening and maybe people here,  
25 generally speaking I think up to 35 pages and some documents

1 up to 50 pages that seem to not really create a problem.

2 But we've had people faxing 180 pages, 125 pages,  
3 85 pages, different size documents that really -- it really  
4 takes an awful lot of time and takes the machine time. But  
5 it also takes staff processing time and it's also a huge  
6 motion to have, you know, other people respond to without  
7 some indication of why it needs to be such an extensive  
8 motion.

9 So whether or not it's something that we should  
10 change and have a limit on page numbers for faxination or  
11 just page numbers in general, for filing motions without  
12 requesting the need to file more, is something that is just  
13 open for discussion.

14 So does anybody have any comments or -- Sacramento,  
15 do you guys have anything? Any input?

16 **MS. SAVAGE:** I guess my first question is in terms  
17 of the page numbers that you're talking about, does that  
18 include exhibits? Or is that, somebody has written 180  
19 pages?

20 **ADMINISTRATIVE LAW JUDGE CLARK:** No, they typically  
21 include the attachments and other documents. Is that right  
22 Ann MacMurray?

23 **MR. READ:** And just to clarify you're specifically  
24 talking about motions because evidence packets you're still  
25 just requesting on the first day of hearing.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Right. Yes. We  
2 don't expect the parties to send evidence packets to our  
3 office. We just expect them to bring it to the hearing.

4           So these are actual, you know, maybe a stay put  
5 motion with the supporting documentations or a motion to  
6 dismiss with supporting documentation and they're just  
7 extensive, really huge motions. I don't know from a lawyer  
8 perspective, I don't know if those are excessive motions to  
9 you or not, exceptional number of pages, but do we have any  
10 input?

11           **MR. HARBOTTLE:** Yes, Dan Harbottle. I think from a  
12 logistical point of view, you should impose a reasonable page  
13 limitation for the entire set of documentations that is  
14 faxed. But you could do it and stages if there's a really  
15 legitimate basis to have a hundred pages, you just have them  
16 do it in thirds.

17           But in terms of sheer motion length or briefing  
18 length, I like the sort of Federal rule where it's 25 pages  
19 or something. If you had a uniform rule I think it's a good  
20 idea because that way you don't have to go through it every  
21 time at the due process hearing or in the context of  
22 preparing a motion. At least you know what your limitation  
23 is and if you need to seek relief if you want to send more  
24 pages.

25           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

1           **MS. SAVAGE:** This is Roberta. I can understand  
2 having the limitation on the number of pages that you're  
3 writing, your motion, so your actual pleading.

4           I struggle with saying you only get 25 pages, that  
5 includes your attachments. Because when you're in Federal  
6 court, the court typically has the records, that you're not  
7 having to submit those documents, where here on our motion  
8 practice we're submitting most every record that we need in  
9 support of our motion.

10           So I like, Dan, your idea of saying maybe for each  
11 fax, like you have a 180-page motion, but you're only  
12 submitting it in packs of 30 and you've got six faxes going  
13 through as opposed to saying you only get 30 pages total  
14 including your attachments.

15           **MR. HARBOTTLE:** Well, I guess in Federal court  
16 you're not limited -- you're limited to 25 pages of text for  
17 your brief but if you have a declaration, say, that's  
18 additional, that includes documentation, you're not limited  
19 on that score. So I'm not suggesting that they impose sort  
20 of a universe of documentation that would be 25 pages all-  
21 inclusive. But that simply -- I thought there were two  
22 things going in our discussion.

23           One was should we limit actual text briefing pages.  
24 That's one question. Then the other one is, does OAH need to  
25 impose a logistical limit, I mean on the number of pages per

1 fax. And each of those things seems reasonable to me.

2 **MR. CORBIN:** This is Carl Corbin. I'd like to add  
3 something here. I have concern if we're breaking it down  
4 into multiple batches and we have six different sets, we're  
5 going to have to keep track of all those documents.

6 I think it would make much more sense to have a  
7 total limit on the amount of documents and if you're going to  
8 exceed that, then you contact OAH or the parties and let them  
9 know that a ruling on that issue and in that way will have  
10 special notice to know we should be looking for six different  
11 sets of 30 pages per -- I mean I can see this logistically  
12 being a bit of a nightmare.

13 **MR. HARBOTTLE:** Do they have to go -- this is Dan  
14 asking -- did the documents, Your Honor, have to go by fax?  
15 For example if we filed a motion that had a pleading that's  
16 ten pages with a declaration separate from that that had 150  
17 pages of exhibits, couldn't we just overnight the whole  
18 package and fax the brief or just overnight the whole thing  
19 as opposed to faxing it?

20 **ADMINISTRATIVE LAW JUDGE CLARK:** You could do  
21 either. We typically like everything through the fax machine  
22 because it's immediately logged into our system. But if you  
23 sent it to us through the mail we would process it  
24 appropriately, accordingly, so.

25 **MR. READ:** I guess my question, and this is

1 Jonathan Read, how big a problem is it for OAH? I mean is it  
2 fairly regular that you're getting 150-page filings and the  
3 second question would be, has OAH explored any type of  
4 electronic filing by email? That might eliminate that  
5 problem.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** There's two  
7 things. One is I don't think it's a huge problem but when it  
8 happens it sort of throws us all for a loop because it  
9 doesn't happen often. So, and it's happened enough in the  
10 past year that it was worthy of bringing forward to this  
11 group to see if there was, you know, any consensus or a  
12 reason to change something.

13 The second part, in terms of electronic filing, and  
14 we talked about this at the last Committee meeting and our  
15 system needed an upgrade in terms of doing fax filings into  
16 using fax filing from the internet and also to provide  
17 service back and forth for everybody. I believe we have that  
18 now. So we're going to be looking at the next, hopefully  
19 before the end of the fiscal year, looking at whether or not  
20 we can create the forms online and use the fax, you know, we  
21 send all of our documents by fax.

22 Email is a little bit different but we've also -- I  
23 think we have that in place now that we can do that as well  
24 but we have to have a meeting with the IT people and see  
25 whether or not we're set up now to record the email services.

1 But I think we've got the necessary parts in place for our  
2 system now to be able to do that. So that's something we're  
3 going to explore in the next couple months.

4 **MR. READ:** I guess my only concern will be, and  
5 this probably has to do with another agenda item as well,  
6 when it's 4:50 and you're trying to file something and  
7 there's a 150-page document ahead of you backing it up. But  
8 other than that I personally haven't had -- experienced much  
9 of a problem with the extensive faxes.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyner, do you  
11 have anything?

12 **MR. WYNER:** I haven't experienced much of a problem  
13 with 50-page faxes. I know I get them. I'll get more of  
14 them. Fifty pages at one time. But I think Dan's suggestion  
15 sounds pretty good. I like to get the brief, go home, think  
16 about it all night and then send it back. So the next  
17 morning.

18 **MR. HARBOTTLE:** Maybe a limitation on if it's over  
19 X pages then you should overnight the entire packet and fax  
20 the underlying brief.

21 **MR. WYNER:** Right. I would consider the whole  
22 thing served as long as you guys did the brief that way.

23 **MR. HARBOTTLE:** Much of the time we're going to  
24 have -- the vast majority of the time we're going to have the  
25 documents that are referred to in the motion on our

1 (inaudible).

2 **MR. WYNER:** Most of the time.

3 **MR. HARBOTTLE:** There might be a report or two.

4 **MR. WYNER:** One thing that would still be the  
5 same -- one thing that would make it easier for attorneys I  
6 would think is that you no longer have that new agreement  
7 that says please sign up if you accept fax.

8 **MR. HARBOTTLE:** Yes.

9 **MR. WYNER:** That seems negative. I always wonder,  
10 doing that before, I always received everything from OAH via  
11 fax, so I wasn't (inaudible) so I guess all the other notices  
12 will not be in compliance with something but we all  
13 understand this practice for a hearing offer.

14 **MR. HARBOTTLE:** Right.

15 **MR. WYNER:** But how the hell can you know  
16 (inaudible) fax you and then you sign up (inaudible) the  
17 attachment.

18 **MR. HARBOTTLE:** That's actually a very good idea  
19 because we do a lot of exchange anyway that way and it saves  
20 on paper tremendously.

21 **MR. WYNER:** Why?

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, in terms of  
23 how it affects our office, as long as we received the notice  
24 or whatever it is and that you provided us some indication  
25 you served the other party it doesn't really matter to us as

1 long as, you know, it's really --

2 **MR. WYNER:** So we can throw out a proof of service  
3 but we would need a separate agreement between the attorneys?  
4 That would work, huh?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** I would think so.  
6 If we get the email system up and running which is what our  
7 goal is, to have email service as well because it's cheaper  
8 for everybody. But when we get that up we would change the  
9 form so that you could say you agree to either fax service or  
10 email service or both and then that would be something that  
11 our department would agree to just modify the form to say  
12 that. That's the intention once we make sure our system can  
13 handle the email aspect of it.

14 **MR. WYNER:** Right. But the form that you already  
15 have, they decided to modify so that there would be a  
16 provision in there what, okay, we can accept that service  
17 from you and we've agreed to your exchange to accept service  
18 via email, which way do you turn?

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

20 **MR. WYNER:** (Inaudible.)

21 (Overlapping voices.)

22 **ADMINISTRATIVE LAW JUDGE CLARK:** And the purpose of  
23 that form is not just for the attorneys, it's also for the  
24 parents because, you know, a lot of times parents don't have  
25 access to a fax but they have access to email.

1           So we get email from a lot of people that don't  
2 have a fax service. So that's why it's important to get the  
3 email service up and running as soon as possible because it  
4 will allow better access to the system to a parent who will  
5 get the notice faster as well as being (inaudible) to the  
6 parties.

7           **MS. SAVAGE:** Judge Clark, this is Roberta.

8           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes.

9           **MS. SAVAGE:** I have a comment from the webcast.

10          **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

11          **MS. SAVAGE:** And there's a comment on this issue  
12 wondering if we can set guidelines regarding the number of  
13 pages for a specific issue and once a case is assigned to a  
14 specific person can we send them a fax or email directly and  
15 not use faxination.

16                So it sounds kind of consistent with what Dan and  
17 Steve are talking about where they might fax OAH but then you  
18 can have a separate agreement with the opposing side.

19               **ADMINISTRATIVE LAW JUDGE CLARK:** It sounds like  
20 that might be what they mean or, you know, we would never  
21 really have a system in place where you will be communicating  
22 directly with the judge. It has to run through the staff  
23 because the staff processes all the documents, keeps the file  
24 intact and keeps the record going. So they would send  
25 whatever you send to the judge.

1           So to the extent the question was asked whether or  
2 not at some point you would communicate directly with the  
3 judge, that's not likely to occur.

4           **MS. SAVAGE:** No, no, I'm sorry. It was you could  
5 communicate directly with opposing counsel on how you're  
6 going to serve them the documents.

7           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes. That makes  
8 sense. That's consistent so I guess the -- if there's a  
9 recommendation from the Committee to reach a consensus. If  
10 not, just a general discussion and we'll inform how we  
11 proceed at OAH if there's not a recommendation.

12           **MS. SAVAGE:** And I think -- I do have more feedback  
13 if you guys are done down there.

14           **MR. READ:** We're not done but go ahead.

15           **MS. SAVAGE:** Okay. So this is Roberta again. I  
16 have concerns if we're starting to set these rules and how  
17 we're going to notify everyone and particularly unrepresented  
18 parents when you say, well, if you have a motion it can only  
19 be this length or it's got to be done this way or you've got  
20 to have it overnighted.

21           If it's not that much of a problem I would prefer  
22 that it remain as is and if attorneys want to have an  
23 agreement where we --

24           (Blank spot in tape.)

25           **MR. READ:** -- think that it would be helpful for

1 parents if OAH had a form that they could use for each or in  
2 addition to the agreement to fax that they had reached with  
3 whoever is representing the public agency. Just that they  
4 know it's there and it's a possibility to exchange by email.

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. As long as  
6 the public agency agrees.

7 **MR. READ:** Yes. Whoever the parties are. If OAH  
8 had a form for that or had a provision for that on the  
9 existing document that allowed the parties to agree that the  
10 folks involved in the case would know that it's a possibility  
11 and they could do it.

12 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Roberta,  
13 I'm going to ask you, if you don't mind, could you slide down  
14 a little bit towards Mr. Corbin or maybe --

15 **MS. SAVAGE:** Oh, sure, we can scoot down.

16 **UNKNOWN MALE:** I can hear your voice and see your  
17 hands.

18 **MS. SAVAGE:** Sorry.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Slide down.  
20 That's much better already but a little more. Perfect,  
21 that'll be great. Thank you.

22 **MS. SAVAGE:** But one thing I just wanted to  
23 interject for everyone and I'm getting public comment in and  
24 so people on the webcast, I'm going to hold general comments  
25 to the public comment time.

1           If there's a comment about the topic, I'll insert  
2 it. It just seems to flow better given our experience in the  
3 past versus having me insert comments that might better be  
4 satisfied per public comment. So I'll be doing that as best  
5 I can.

6           **MS. RUSSELL:** We have a comment about the fax  
7 machine. Is there just one fax machine that gets bogged down  
8 or something? Or one line?

9           **MS. SAVAGE:** Go ahead and say who you are.

10          **MS. RUSSELL:** I'm Katie Russell. I'm a parent rep.  
11 We're having questions as to why you get so bogged down. Is  
12 it like there's only one machine or one fax line and if you  
13 miss a deadline because you're behind somebody else -- is  
14 there a possibility to expand the number of lines?

15          **ADMINISTRATIVE LAW JUDGE CLARK:** Well, we have a  
16 fairly extensive system. I think it's just the size of the  
17 document is what creates the issue from my understanding of  
18 that, but I'm not a technical person so I'm not entirely  
19 sure, you know, why it becomes an issue for the faxination  
20 machine and our staff.

21               We have enough fax lines to generally cover our  
22 inflow, it's just when you have these exceptionally large  
23 documents. Plus it's really difficult to -- you know, when a  
24 parent gets a huge document or, you know, even a district is  
25 sent something like that, it's just hard to respond and it's

1 hard to process and we have a three-day turnaround on our  
2 motions you've got these two really extensive sets of  
3 documents and it just takes long to process.

4           And sometimes and more frequently the documents  
5 aren't necessarily pertinent to the issue you have to  
6 resolve. It's just somebody wanting to give you a lot of  
7 background information. So I mean there's that issue as  
8 well.

9           But I think the ideas that you've talked about  
10 probably -- and I think what Mr. Read said that it might end  
11 up taking care of itself once we get the email service  
12 better. But I think being able to maybe suggest at a certain  
13 point that we -- you send that to us through mail as opposed  
14 to fax, maybe that's just for exceptionally large documents.  
15 Do you have another -- go ahead, Roberta.

16           **MS. SAVAGE:** The public comment that I had given  
17 before I wanted to clarify. We all misinterpreted what he  
18 was recommending. And his recommendation was that when you  
19 get your case assigned and that when OAH identifies a staff  
20 member and so the parties could communicate and maybe send  
21 documents like a PDF to that staff member as opposed to by  
22 email as long as everyone knows that's how it's being  
23 coordinated.

24           **ADMINISTRATIVE LAW JUDGE CLARK:** Oh, I see.

25           **MS. SAVAGE:** So again with Jonathan it might get

1 addressed but this would be a different way so you're not  
2 talking to the judge but a party could PDF a staff member  
3 assigned to your case the document that they can then  
4 process.

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. It may be  
6 that at this point we just have to wait and see if we're able  
7 to get the email service going in the next couple months and  
8 hopefully by the end of the fiscal year I'll have an answer  
9 to that, which is June 30<sup>th</sup>.

10 So why don't we move on to the some of the other  
11 topics under -- I should say unless you have a recommendation  
12 at this point. I'm not sure we truly have a consensus, just  
13 more of a discussion.

14 Propose daily document received cut-off time.  
15 Again, this is just from our processing point and, you know,  
16 we're receiving documents right up until the end of the day  
17 at, you know, 4:58, you know, we're getting somebody's  
18 response to a motion and it makes it hard to counter.

19 It typically happens on Thursday of a furlough week  
20 or Friday when it's a non-furlough week that everyone's like,  
21 you know, they decided, oh, we forgot about our hearing  
22 Monday so now we need to do something about it. But we're  
23 not receiving it until really late in the day.

24 And our staff also may leave at 4:30 or 5:00  
25 depending on their staggered shift. So just having an

1 earlier document cut-off time when anything received by a  
2 certain time during the day, otherwise it will just be  
3 processed as if received the next day. I don't know how you  
4 feel about that, if that's something that's workable for the  
5 parties and I'm just curious about your thoughts.

6 **MS. SAVAGE:** Anyone have a comment up here? We  
7 have a public comment on it.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Go ahead.

9 **UNKNOWN FEMALE:** My public law, again going back to  
10 unrepresented parents, you know, parents have to work. This  
11 isn't their full time job like attorneys. And basically they  
12 have to do a lot of their work after hours. And so I find  
13 that incredibly unfair.

14 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, what aspect  
15 of it would be unfair?

16 **MS. SAVAGE:** Well, it depends on the cut-off time.  
17 Is it midnight or is it 4:30?

18 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, right now  
19 the cut-off time is the close of business which is 5:00 so  
20 anything received after 5:00 which is pretty standard  
21 business practice everywhere, anything after 5:00 is treated  
22 as received the next day.

23 **UNKNOWN FEMALE:** (Inaudible.)

24 **ADMINISTRATIVE LAW JUDGE CLARK:** Say that again.

25 **UNKNOWN FEMALE:** Well, I guess I don't understand.

1 If it's already close of business, why are we discussing  
2 this?

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Because the issue  
4 is whether or not we should have a cut-off time for our  
5 internal processing purposes at OAH so that our staff can  
6 process the documents, send notice to the parties and do  
7 what's necessary before the close of business. So that's the  
8 issue.

9 **MR. WYNER:** I don't understand. What happens if  
10 someone files at 5:00?

11 **ADMINISTRATIVE LAW JUDGE CLARK:** It's treated as  
12 received the next business day.

13 **MR. WYNER:** And so what's the proposal?

14 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, we don't  
15 have one. The question is whether or not we should have a  
16 cut-off time, say anything received after 4:00 now is treated  
17 as received the next business day so there's --

18 **MR. WYNER:** Shorten the time?

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Shorten the time.

20 **JUDGE MAC MURRAY:** (Inaudible) comes in when it's  
21 really about procedure and says things that affect  
22 (inaudible), hearings, it's not so much (inaudible) formal  
23 business but it's things that affect (inaudible) and so if we  
24 receive a continuance request at 4:58 we're not going to see  
25 it until Monday morning.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Right.

2           **UNKNOWN FEMALE:** And so that's the issue.

3           **MR. WYNER:** I think we could go either way. I  
4 think that's a legitimate point. You guys can close your  
5 work by 4:00. When I go to court, District Court in San  
6 Diego, a filing that's due on a particular day is accepted  
7 until 11:59 p.m. (Inaudible).

8           **MR. READ:** In a continuance you're not necessarily  
9 dealing with a filing deadline. It's just that you guys  
10 would like to see it before going out to the hearing.

11           **JUDGE MAC MURRAY:** We really need -- we've got  
12 (inaudible) Monday morning and everybody's going to have to  
13 show up and waste all their time because we don't  
14 (inaudible).

15           **MR. READ:** Right. Yes.

16           **UNKNOWN FEMALE:** Is the issue because of furloughs?

17           **JUDGE MAC MURRAY:** No. It's even occurred on non-  
18 furlough weeks on Friday afternoon at 5:00. (Inaudible).  
19 You come in Monday morning and staff starts pulling things  
20 off faxination and there are these continuances that are  
21 faxed.

22           **MR. READ:** And I wouldn't be opposed to some kind  
23 of a notification from OAH saying that if you would like a  
24 continuance to be considered, it needs to be filed, you know,  
25 before 4:00. But the issue that I thought this was about was

1 that sometimes we've attempted to fax things at 4:50 and the  
2 fax machine in Sacramento is backed up and it's not getting  
3 through.

4 **JUDGE MAC MURRAY:** What we do in the next  
5 (inaudible) for the ordinary course of motions, et cetera.  
6 This issue of continuance (inaudible).

7 **ADMINISTRATIVE LAW JUDGE CLARK:** It's more so for  
8 the continuances, that's true. I guess a lot of these sort  
9 of, maybe they tie in just the continuance, and it isn't  
10 about just making it easier for OAH to process things, it's  
11 about making it more efficient for the parties. And you  
12 know, the continuances Ann has explained, you know, if the  
13 parties, everyone's expecting to go to hearing at 9:30 on  
14 Monday morning and we're not being warned of a continuance  
15 until 4:50 on Friday afternoon, it makes it hard to get it  
16 ruled on and get notice to the parties. So maybe it really  
17 is more about continuances.

18 And I see two hands in Sacramento. I see Roberta  
19 and I also see somebody in the audience.

20 **MS. SAVAGE:** We have a public comment and then we  
21 have Ms. Brock so --

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Go ahead.

23 **UNKNOWN FEMALE:** I was wondering if it made sense  
24 to have a special policy for like emergency continuances  
25 where there would be either some other phone number or some

1 other -- if it's after 3:00 the business day before the  
2 trial, then X must happen. You must make a phone call when  
3 you make the fax so we know to take the fax out of the file.

4           You must do something else so that for those  
5 emergency situations, you know, somebody got in a car  
6 accident, somebody's in the hospital, somebody's had a heart  
7 attack, that can be dealt with immediately but maybe a phone  
8 call can be made to bring that to the front of the pile.  
9 Also with a due date as soon as -- as soon as you know, by  
10 3:00. If something happens after 3:00 then there could be an  
11 emergency after that, then here's the policy you follow.

12           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. That's a  
13 good suggestion.

14           **MS. BROCK:** And on that kind of thought, you know,  
15 parents who have fax machines don't regularly check them  
16 because they don't use them all the time and perhaps a phone  
17 call to let them know that it's coming through.

18           But the other thing, too, is that as the recipient  
19 of documents practically in the middle of the night and  
20 knocking on my door, I would like there to be some kind of  
21 regulation as to when you say cut-off time, you know, cut-off  
22 time that you can also not disturb people in their homes with  
23 these documents.

24           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, and I'm not  
25 sure, Ms. Brock, what you're talking -- you're talking about

1 somebody served something on you late at night?

2 **MS. BROCK:** Right. Right.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

4 **MS. BROCK:** Like 10, 11 o'clock at night, showing  
5 up at the door. So what I'm saying is they can fax OAH, you  
6 know, any time of day or night but you really can't fax a  
7 home, you know, at that time of night and plus if you're  
8 faxing during the day and you're not expecting a motion or a  
9 document you might not see it for a couple of days.

10 You know, typically I don't check my fax machine.  
11 But it could come through. So I'm saying that there needs to  
12 be some kind of precaution for unrepresented parents to  
13 receive documents. I mean you're saying, you know, cut-off  
14 time, but, you know, you might not even see the document  
15 until it's due or past due if it's only by fax.

16 **MR. WYNER:** That's kind of consistent with how you  
17 file an ex parte motion. And so maybe we need a better ex  
18 parte rule and say that continuances have to be filed three  
19 days before or you've got to do an ex parte and then you've  
20 got to make sure that you say that you've contacted the other  
21 party and let them know. (Inaudible). It's bigger I think  
22 than what you're talking about now.

23 Frankly I don't understand how, you know, first of  
24 all whenever it's an emergency motion, I'm sure we'll find  
25 some other things that have been itemized so far and give us

1 a new line (inaudible) both lines but really the continuance,  
2 how are you going to do anything about it at 4:00 in the  
3 afternoon?

4 How is an attorney going to respond at 4:00 in the  
5 afternoon? I don't want to go sit by my fax machine and even  
6 somebody in the office that checks it doesn't sit there but  
7 checks it, but, you know, 4:00 Thursday they're not sitting  
8 there hoping that a fax is going to come on Memorial weekend.

9 **UNKNOWN FEMALE:** Since you have a meet and confer  
10 obligation it should be no surprise to you of continuances  
11 because there's that meet and confer obligation and if you  
12 agree then file for a continuance and if you don't agree then  
13 both parties weigh in on what works for them with the  
14 proposed dates that might work.

15 (Overlapping conversations.)

16 **MR. WYNER:** At 4:00, you know, people -- you might  
17 not have judges available. At 4:00 the business day before a  
18 hearing, are you going to, you know, rule on the motion for a  
19 continuance?

20 **ADMINISTRATIVE LAW JUDGE CLARK:** That is the  
21 problem but it's also notice. Because the parties may know,  
22 you may talk to the other side, talk to the parent, talk to  
23 the district and you both agree that we're not going to  
24 hearing Monday but we don't hear about it.

25 You know, we have an after hours line you're

1 supposed to call but people often don't. So the parties  
2 understand they're not going to hearing Monday morning at  
3 9:30 but we're sending a judge by plane or driving from LA to  
4 San Diego or vice versa and we're not getting the word that  
5 you've agreed to continue or you may or may not have good  
6 cause and parties decide they're not going to show up but the  
7 judge might decide it needs to go forward anyway.

8 **MR. WYNER:** Sanctions would cure that quickly.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** (Inaudible).

10 **UNKNOWN FEMALE:** I like Steve's idea but I think --

11 **MR. READ:** Which one? You've got to clarify that.  
12 That's important to us down here.

13 **MS. SAVAGE:** All right. Which Steve or which idea?  
14 So I like the idea of having more of an ex parte process for  
15 motions that are filed within a number of days of hearing and  
16 I would think it would be like a better concept to say any  
17 motion that's filed two business days or three business days  
18 before your trial date regardless of what it is should be --  
19 you know, constitute, I don't know if we say ex parte or  
20 urgent, but something that also requires a call in to OAH  
21 because anything within three days or two days regardless of  
22 what it is has to be dealt with quickly.

23 So I would think instead of just a continuance, it  
24 might be there's a document request or a motion in limine or  
25 something that's going on and those need to be -- we need to

1 alert OAH as well as the opposing side that this is coming  
2 through and could affect that first day of hearing.

3 **MR. READ:** Can you clarify something because  
4 I -- we've narrowed it down to continuances and now I think  
5 we might be talking about a specific type of continuance.  
6 Because there's a stipulated continuance that's allowed as a  
7 matter of course the first time. And then anything other  
8 than that even if there's a stipulation is still a motion.  
9 So until that motion is ruled on to me the due process  
10 hearing is still scheduled and is still going forward.

11 So is the real issue when the first time it's the  
12 stipulated continuance that's allowed by the parties as a  
13 matter of course, getting that information to the judge so  
14 that he or she doesn't have to travel to the hearing?

15 **ADMINISTRATIVE LAW JUDGE CLARK:** I think that's an  
16 important consideration. If you think you've got good cause  
17 and it's not going to go forward, you wouldn't want us to go  
18 to that expense to send judges places that they don't need to  
19 go. I mean we can also reassign them to other matters. So  
20 it is a matter of getting notice to us so that we can plan  
21 accordingly.

22 **JUDGE MAC MURRAY:** Really there's other  
23 distinctions that are made for persons (inaudible) a  
24 continuance (inaudible) good cause because of a change that  
25 we're having to get everybody (inaudible) and still issue

1 orders on those but when the presiding judge is given that so  
2 I can tell you when I am in my office on Thursday afternoon  
3 on a furlough or a Friday on non-furlough, at 3:30 I start  
4 getting inundated with these things and they fax business for  
5 Monday and it just creates a lot of issues for everybody and  
6 we're trying not to waste anybody's time including ours. So  
7 it really doesn't make a difference what kind of continuance  
8 it is. It's just that it needs to be done with some kind of  
9 call that it's coming or something.

10 **MR. WYNER:** Is this -- are these cases that parents  
11 are representing themselves or are these cases just about  
12 counsel or --

13 **JUDGE MAC MURRAY:** It's both. A lot of times the  
14 parents (inaudible) but it's mostly (inaudible) parties that  
15 are represented (inaudible) you have good cause or whatever  
16 it is.

17 **MR. READ:** Well, my suggestion would be having  
18 notice, some further action, whether it be a phone call or  
19 something rather than another procedural rule because, you  
20 know, I can work with these rules full time and get  
21 comfortable with them. Somebody who is not represented might  
22 have a difficult time keeping track of all them. It might  
23 complicate the fact.

24 **JUDGE MAC MURRAY:** (Inaudible) unrepresented cases  
25 or someone that is represented as being able to facilitate

1 the process. (Inaudible) courtesy copying is also something  
2 that might be considered (inaudible) faxinate in to  
3 Sacramento but (inaudible) Southern California office it  
4 might have some other (inaudible) in San Diego faxing a  
5 courtesy copy (inaudible) faxination (inaudible).

6 **ADMINISTRATIVE LAW JUDGE CLARK:** Right. And I  
7 think that's kind of confusing, you're having people faxing  
8 multiple locations instead of just that one faxination number  
9 which goes through processing in the system.

10 Let's continue with the next item though.

11 **MS. SAVAGE:** I do have just one final comment  
12 though. I think the idea of notice is good but it also might  
13 go to the comment from the web that the last issue is this  
14 might be something where there's a notice but you notify the  
15 staff member that is assigned to your case and you could  
16 email them the document so that it's getting to the Van Nuys  
17 office or the San Diego office or whatever, but I agree.

18 I think instead of creating a whole new set of  
19 rules if the new rule is if it's before a certain number of  
20 days before a trial, you give notice so that OAH, you guys  
21 can get it processed. And then you can tell us at that time,  
22 can you email it down to here, can you do this, can you do  
23 that, so that it can get facilitated.

24 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

25 **MR. WYNER:** I'm confused a little bit. May I ask

1 for some clarification? So, is what's happening some people  
2 are not filing this last minute continuance in Sacramento and  
3 instead just filing it in --

4 **JUDGE MAC MURRAY:** They're filing it in Sacramento  
5 but at 4:59 (inaudible). If they are getting the faxination  
6 at that time they're not getting into the system and assuming  
7 it takes three minutes to do all that, I might not be around.  
8 I didn't know it was coming.

9 **MR. WYNER:** (Inaudible) fax going to locations.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Is the suggestion.  
11 But I don't know. I think the idea really is about as to  
12 continuances, is the earlier notice is better. Because that  
13 way our staff is available to process what's necessary to get  
14 it to the right people before the close of business.

15 So that's really what this item is about. And  
16 again it may not be anything that we can reach a consensus  
17 on. It's just more or less talking about some of the issues  
18 that we can print when we're trying to calendar for people.

19 We can't keep our judges busy now so to make sure  
20 that all the parties know whether or not the matter is going  
21 forward on Monday. So it's typically that and again that  
22 kind of is the letter C, 3c, which is should there be less  
23 time to respond to continuance requests.

24 And right now we wait three business days from the  
25 time the motion is filed until we send it off for a ruling to

1 allow the other side the option to respond. But continuance  
2 requests seem to be a little more important for everybody to  
3 know and hear about sooner.

4           So maybe there should be a different rule for  
5 continuance requests. Again that may just be  
6 overcomplicating the matter.

7           And some of the stuff we have to have regulations  
8 promulgated anyway with the California Department of  
9 Education. They're not just things that we can easily  
10 resolve here today. So it's more just discussion items. If  
11 you're seeing these issues out in your (inaudible), if  
12 they're issues and concerns for you as attorneys and as  
13 parents, if you come across some issues, that's the type of  
14 stuff we need to know about as well.

15           **MR. WYNER:** As I listen to all of this, I  
16 understand I think the problems that happen when people  
17 (inaudible) about OAH (inaudible). I've already said I think  
18 that's sanctionable as to an attorney but as to a parent,  
19 they don't know.

20           As to an attorney who is seeking a continuance  
21 shortly before a hearing, I don't know why anybody would file  
22 something like that at 3:00 the last business day before the  
23 hearing because you have a three-day -- you have a rule that  
24 says your opposition has three days (inaudible) the three-day  
25 period to respond to and oppose a continuance (inaudible).

1 (Inaudible). Why isn't that sanctioned?

2 **MR. READ:** I don't understand. A stipulated  
3 continuance?

4 **MR. WYNER:** Agreed to at the last minute.

5 **MR. READ:** Right.

6 **MR. WYNER:** So they want to know about 3:00 on the  
7 last business day before a hearing that they don't have to  
8 send somebody to somewhere and I'm saying there's no reason  
9 not having a rule that would sanction attorneys (inaudible).

10 **ADMINISTRATIVE LAW JUDGE CLARK:** I don't know that  
11 we have that authority under the regulations to sanction.

12 **MR. READ:** Yes, I mean, I can think of very  
13 justified reasons, you know, medical emergency, deaths, that  
14 might be a reason for a late, last minute continuance.

15 **MR. WYNER:** That wouldn't be a reason for sanction.  
16 Just forgetting about them.

17 **ADMINISTRATIVE LAW JUDGE CLARK:** Sacramento?  
18 Roberta?

19 **MS. SAVAGE:** The comment from our webcast is that  
20 the timelines for filing every document needs to be posted  
21 clearly at OAH website. We are discussing filing for a  
22 continuance and I cannot find any info on site. So whatever  
23 the rule is, it just needs to be clearly posted so everyone  
24 can comply with it.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Any further

1 discussion on those two -- on those issues? I know we  
2 haven't reached any -- again, no consensus at this point but  
3 it's interesting to get the different perspectives.

4 **UNKNOWN FEMALE:** I just have a question. You  
5 mentioned quickly the after hours phone number. Are you all  
6 finding at OAH that people are under-utilizing that for a  
7 Friday or Thursday night before a furlough?

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Under utilized?

9 **UNKNOWN FEMALE:** Would that solve it? I mean  
10 (inaudible) fax machine but if someone did call after hours I  
11 would think that's in order to make sure the judge doesn't  
12 show up on a Monday.

13 **JUDGE MAC MURRAY:** What usually happens when  
14 there's a continuance you don't know it's going to be granted  
15 so (inaudible) because you don't have a ruling.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, I would say  
17 that the after hours line generally I think people are  
18 starting to catch on and it's getting used a lot more than it  
19 has been in the past but it's a helpful tool for sure to put  
20 that notice out there.

21 **MR. WYNER:** I just want to weigh in on the  
22 question. I think there should be less time to, you know,  
23 last minute continuance request. And some federal courts use  
24 the rule that there's an ex parte motion that you've got 24  
25 hours to file a response and if you don't file a response

1 then the motion is approved.

2 But I don't see how given the time frame that we're  
3 dealing with, you know, a 45-day time line, how you can give  
4 people three days to respond to -- I mean it's usually pretty  
5 simple, aren't they? You don't have a witness, you know,  
6 you're dead. You just can't do it. I mean no big deal.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** The next one is  
8 3d, adding parties to the complaint. Is it an amendment to  
9 the complaint or not? I put this on here just for general  
10 discussion, it's really more of a legal issue so it may not  
11 be important to the Advisory Committee but I'm just curious.  
12 Mr. Corbin, did you have some questions about this? I'm not  
13 sure if this sort of ties in with something you had suggested  
14 or not.

15 **MR. CORBIN:** Well, I do have a question. Is this  
16 an amendment? Is this a request for motion? I've seen it  
17 done in an additional complaint was filed, I've seen it done  
18 through a motion. We just need to know what the consistent  
19 process form is. How, if we want to add somebody or a parent  
20 representative is trying to add somebody, what is the process  
21 by which that can occur? Because I need to know if they're  
22 not following the process whether or not we should object.

23 **ADMINISTRATIVE LAW JUDGE CLARK:** I see. Does  
24 anybody have -- let me just -- generally speaking and I'm  
25 going to use a student filed complaint as the example. A

1 student will file a complaint and they may just name the  
2 district and then the district will say, we also need you to  
3 add Mental Health or maybe a charter school.

4 And so the question really has come, and I think  
5 this is what Mr. Corbin is addressing, is whether that's an  
6 amendment which would restart the time lines if we add a  
7 party, or whether or not that's just adding a party to the  
8 complaint because the person who filed did not request the  
9 addition of the party, the responding party requested it.

10 Again I think this is probably beyond the scope of  
11 this Committee to make that type of recommendation so it's  
12 just an issue, if anybody has any feedback or comment I would  
13 be interested to hear it at this point but I don't think it's  
14 something that really is subject to what this Advisory  
15 Committee is for -- we don't take legal positions, and we  
16 don't just debate how certain, how OAH should rule on the  
17 law, so --

18 **MS. SAVAGE:** We have a comment up here.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Go ahead.

20 **MS. DOME:** This is Dora Dome. Along those lines,  
21 when a party adds another party by filing a motion or  
22 whatever, what we are running into is if we don't object or  
23 we don't oppose the motion, we're seeing that it's taking  
24 weeks for OAH to rule on whether or not to allow the addition  
25 of the party and then consolidate the two actions.

1           And so is there a process around that? If it goes  
2 unopposed in terms of how long OAH will kind of sit on that,  
3 make a determination about adding a party and consolidating  
4 the motions?

5           **ADMINISTRATIVE LAW JUDGE CLARK:** No. There's  
6 really no process. It's the same process every time some  
7 type of a motion is filed. We wait three business days to  
8 allow the other side to respond and then we send it to a  
9 central place so that the judges know there's a motion made  
10 to rule on and they rule on it according to their schedule.

11           So we should not be waiting weeks to process any  
12 motion whether it's opposed or not. So I'm sorry if that's  
13 happening and I'll definitely take it up with my support  
14 staff supervisors to make sure that we're getting that  
15 information to the judges quicker and they are ruled on  
16 faster.

17           So it wouldn't make any difference at this point in  
18 terms of how the motion should be handled, it's just whether  
19 or not the time lines would restart. If we don't have any  
20 comment or any about this since it's a legal issue --

21           **MS. BROCK:** I just have a quick comment. Perhaps  
22 if the opposing party said we're unopposed then you wouldn't  
23 have to wait the three days. Is that something --

24           **ADMINISTRATIVE LAW JUDGE CLARK:** That is typically  
25 true. When we get a notice from a party saying they don't

1 oppose it or they agree or whatever, then it's immediately  
2 ready for a ruling and it's usually put into the motion rule,  
3 docket we call it, sooner. So it should be happening faster.

4 **MS. SAVAGE:** I just had a question back on the  
5 original issue of amendment or not. What's OAH doing right  
6 now? Are they treating them all as vacating the current  
7 dates and restarting the time line or are you saying no, it's  
8 just part of the case?

9 **ADMINISTRATIVE LAW JUDGE CLARK:** I think you'll  
10 find that different judges handle it differently.

11 **MS. SAVAGE:** That's the problem.

12 **MR. CORBIN:** Judge Clark, that is my question on  
13 this. Again you may add a party and they may not have the  
14 full opportunity that the other parties have had to respond  
15 to the issue. And I've had this happen in particular with  
16 districts and then where a County Office of Education somehow  
17 gets stuck in there, added at some point, and this COE hasn't  
18 had the full opportunity to explore. They may have missed a  
19 resolution statute.

20 **ADMINISTRATIVE LAW JUDGE CLARK:** I understand. I  
21 understand why it's an important issue. Mr. Harbottle, did  
22 you have a comment?

23 **MR. HARBOTTLE:** I think that was essentially it.  
24 The third is going to have interests and we often see the  
25 last minute motions to amend, et cetera, and utilize

1 strategically as opposed to substantively, in order to get a  
2 continuance. So I think they should be treated as motions  
3 and ruled on as motions and when the existing parties make a  
4 filing one way or the other.

5 (Overlapping voices.)

6 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyner?

7 **MR. WYNER:** My understanding is if any time that a  
8 complaint, a due process complaint, is amended it restarts  
9 the time line. I've never had a decision to the contrary.

10 **MR. HARBOTTLE:** That's true unless parties agree to  
11 the contrary.

12 **MR. WYNER:** Right.

13 **MR. HARBOTTLE:** I think the -- for me the seminal  
14 question is shall we treat it as a motion? Because once it's  
15 clear that it's an amendment, then absent a stipulation the  
16 time line will restart.

17 But I don't like -- I see regularly that within  
18 three days of the hearing somebody makes some kind of motion  
19 that would modify -- would constitute an amendment for  
20 purposes other than amending the complaint. So I think we  
21 should have the right to look at that and determine whether  
22 we have an opposition to it or not. And treat it as a motion  
23 as opposed to an automatic restart.

24 **MS. SAVAGE:** We have public comment. I also have  
25 an issue with allowing another party to amend a complaint.

1 If the original complaint was written by Party A and Party B  
2 wants to add a third party, then I have trouble with it,  
3 calling it an amendment because you're allowing a different  
4 party to amend the original party's complaint. That's just a  
5 thought.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** Which I appreciate  
7 everybody's input on this. Again, this is not something that  
8 we're looking for a recommendation on, it's a legal issue.

9 Let's move on to 4 -- it looks like 4e which is  
10 assigning the same judge to the prehearing conference and the  
11 due process hearing. The current practice is for OAH to do  
12 that. We do our best to do that but we find that sometimes  
13 the judges are in hearing when they have a prehearing  
14 conference on so we have to get another judge to cover it for  
15 them. Or they may have a conflict and they're not available  
16 and we have someone else cover. The practice is to try to  
17 have the same prehearing conference judge, or the same due  
18 process hearing judge appear at the prehearing conference.  
19 So go ahead, Mr. Harbottle.

20 **MR. HARBOTTLE:** Just a question. If a new judge --  
21 if a judge has step in and handle the prehearing conference,  
22 does the judge presiding at the hearing listen to the record  
23 of the PHC? That to me is an important piece because that  
24 way -- what we're missing is any representations that were  
25 made, any requests that were made, as long as those -- I mean

1 they're usually less than a half an hour or so. Shouldn't  
2 they listen to that and make sure that they're --

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. And that's  
4 a good suggestion. How a judge prepares for a hearing is  
5 really up to the individual judge but there's usually a  
6 written order that follows a prehearing conference and that's  
7 sort of what guides the hearing. Go ahead. Hello?

8 **MS. KNOX:** Hi, this is Christian Knox. We're  
9 having a big problem with this. My last case had at least  
10 four different judges assigned and when we finally got to  
11 hearing the judge presiding over the hearing would say, well,  
12 did you discuss this during the prehearing conference and we  
13 would say yes, we did as a matter of fact. And they would  
14 say basically, too bad. I'm going to go a different  
15 direction. And it was a big problem.

16 I would rather have the prehearing conference moved  
17 to a different time to allow the judge who's going to hear  
18 the case to be the judge who's going to conduct the PHC.

19 The other issue that we're having is we will ask  
20 the judge who appears at the PHC, are you the judge assigned?  
21 And the judge will say I don't know. Well, that's a big  
22 problem, too, because if I want to exercise my peremptory  
23 challenge against that judge and I don't know whether that's  
24 the judge assigned to the hearing or not, that creates an  
25 issue.

1           And I know that there was a case where the judge  
2 represented that they were not the judge to be assigned to  
3 conduct the hearings so a peremptory wasn't exercised and  
4 then five days later they found out that in fact that judge  
5 was assigned and because they had convened a peremptory --  
6 convened the PHC, the peremptory was not allowed. And so I  
7 think there's an issue there that really would be very  
8 helpful for everyone if it were -- whoever is assigned to  
9 conduct the PHC -- if you have to hold it at a different  
10 time, you have to hold it at a different time.

11           **UNKNOWN FEMALE:** I have a comment. I'm a parent  
12 involved -- who has been involved in an OAH hearing myself  
13 and in our case the tape of one of our prehearing conferences  
14 was lost. And so it wasn't possible for any future judge  
15 that was assigned to listen to that tape. Therefore the  
16 issue becomes, there are these issues wherein a parent finds  
17 like you were, in a situation where the tape may not be  
18 available. So I think it's crucial since that can and has  
19 happened, that the judge assigned to the prehearing should go  
20 ahead and continue on. Absolutely. And I think that --

21           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, thank you.

22           **UNKNOWN FEMALE:** -- you know, there's faults in the  
23 system so we have to protect the parent or the child.

24           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you.

25 Ms. Brock?

1           **MS. BROCK:** A couple comments. One, on what  
2 Christian had said about not knowing the peremptory  
3 challenge, it it's a different ALJ after the prehearing  
4 conference, should we -- should OAH allow you to still use  
5 your challenge if you switch judges without, I mean after,  
6 without notice?

7           And, never mind, I forget the second one.

8           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, I think in a  
9 situation described by Ms. Knox that would be something that  
10 they should bring to the attention of the office. Either  
11 file a letter or a motion and just say what occurred. And  
12 I'm certain that the regulations would permit a challenge to  
13 somebody under those circumstances. But, Ms. Savage, you  
14 raised your hand?

15           **MS. SAVAGE:** We have some more public comment.

16           **ADMINISTRATIVE LAW JUDGE CLARK:** Oh, go ahead.

17           **UNKNOWN FEMALE:** As a parent we did in fact run  
18 into the exact situation that Ms. Brock refers to, where we  
19 used our challenge on a judge in the pretrial and when we  
20 came up to the judge at the hearing we did not understand nor  
21 is there any rule or anything that we can see, that we could  
22 then have another challenge. And so we were then with the  
23 judge that we would have possibly challenged at that time  
24 with no other choice, in our eyes as a parent.

25           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. I see.

1 Thank you. Mr. Wyner?

2 **MR. WYNER:** That happens sometimes in the law. You  
3 know, sometimes you could have (inaudible) notwithstanding  
4 the verdict (inaudible) that you go back and you're supposed  
5 to go to the trial and you find he is retired or whatever so  
6 some things happen that, you know, are not controllable.

7 But I think that, you know, the understanding is  
8 we're going to get the same judge that we got at the  
9 prehearing conference, we're going to exercise our preemptory  
10 based on that judge, not on another judge. So I think what  
11 might be fair is for OAH to have a policy that reopens the  
12 prehearing conference. In other words, the fact that all of  
13 the judges at OAH don't agree with each other and they all  
14 practice very differently, and one judge may throw out a  
15 claim and not let you go forward on it whereas you may find  
16 yourself in front of a judge who says no, I'll let that go  
17 forward.

18 I think if that's going to happen, this used to go  
19 on with SEHO where there weren't prehearing conferences until  
20 day of hearing and then spend the entire morning really  
21 having a prehearing conference. I think you should have the  
22 right to at least re-argue issues that were (inaudible). We  
23 all know issues that were adversely decided.

24 **UNKNOWN MALE:** If you get a new judge you mean?

25 **MR. WYNER:** Yes (inaudible). Because otherwise,

1 you know, the judge who is sitting there that morning hasn't  
2 really looked at, thought about it, done much -- it's  
3 probably as much of a surprise to the judge as to you that  
4 the judge is there. They don't have, you know, then discuss  
5 it. So you're there to be bound by somebody else's word.  
6 That part.

7 **MR. HARBOTTLE:** Well, I think -- I'm not sure I  
8 understand what you're saying but it's, to me I think they  
9 ought to be bound by the other judge's word. Like the  
10 example that was given here was that a ruling can change  
11 having already been made at the prehearing conference.

12 In my opinion once the prehearing conference is  
13 conducted and a memo comes out saying what the issues are or  
14 whatever the order contained, that should bind the parties  
15 unless someone disagrees with it, no matter who's the judge,  
16 so that in that period between the prehearing conference and  
17 the hearing all parties know who the witnesses are, what  
18 order they're going to be in, what the issues are, what  
19 documents are going to be admitted, (inaudible) because  
20 otherwise you're just getting a new --

21 **ADMINISTRATIVE LAW JUDGE CLARK:** I saw two hands in  
22 Sacramento. First, there's a public comment first and then  
23 Ms. McArthur.

24 **UNKNOWN FEMALE:** In our case, I'll try not to be  
25 too specific, I wish I couldn't be but I must, I had pretrial

1 hearings because of continuances or different issues not  
2 always emanating of course from myself, so I had three judges  
3 on that different. And the rulings of some were changed by  
4 the time we got to the hearing judge, by the hearing judge.

5 So I ran into the issue of having actually four  
6 judges on the same case through pretrial. So in my situation  
7 I think it demonstrates that the absolute possibility of a  
8 problem and of a potential problem in the system as it exists  
9 where you have multiple people handling the case.

10 I know it can't always be done, but it must be  
11 attempted to be done and certainly on a better situation than  
12 we had because this is over a short period of time -- one  
13 pretrial judge, a second pretrial judge, a third pretrial  
14 judge, all making different rulings. One case lost and then  
15 a case where a judge overruled some of the pretrial rulings  
16 in his decision.

17 So this can't happen. This is unacceptable and  
18 from a parent's standpoint it is extremely frustrating as  
19 well as confusing. I think that if it was consistent we  
20 would have a whole different process here, at least as we  
21 have experienced it.

22 **MS. MC ARTHUR:** I just wanted to echo two points.  
23 One is the consistency that you're speaking to. That's  
24 certainly quite crucial but we also understand that, you  
25 know, things happen and there may be inconsistency.

1           Where there is inconsistency among judges in terms  
2 of identity of different judges being assigned, I think it's  
3 absolutely crucial that the judges follow the previous  
4 orders. There needs to be some good cause for rearguing  
5 other than the fact that I've got a new judge. Because there  
6 is an obvious issue of notice and resulting due process  
7 issues if we're able to simply, you know, re-argue and get a  
8 potentially different ruling on the day of the hearing  
9 without there being good cause for that re-argument.

10           **MS. SAVAGE:** Tammy?

11           **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Brock?

12           **MS. BROCK:** You know, we had this discussion about  
13 the ALJs that call up for mediation and then a different ALJ  
14 shows up right after we wasted an hour or two on the phone,  
15 you know, both sides with the ALJ.

16           And I think there needs to be some kind of policy  
17 that you can move to have it at a different time, you know,  
18 just so you can have the same person. That, you know, we  
19 understand that things happen and things change but it seems  
20 that there are a lot of problems associated with not having  
21 the same person handle a prehearing issue or a pre-mediation  
22 issue.

23           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, I want to  
24 just talk about first the mediation. You always have that  
25 option to request the same mediator and move your mediation

1 to accommodate their schedule if that's what your preference  
2 is. There are a lot of parties though that prefer to go  
3 forward on the mediation date because of other scheduling  
4 issues, the hearing is coming up or whatever it may be. But  
5 they want to use a different mediator. But we should be  
6 giving you notice if we're changing the mediator at the last  
7 minute and you should have the option to say I prefer to keep  
8 the person I talked to, please let's agree on a different  
9 date with the district or the student, depending on who's  
10 making that request.

11           The PHC and the due process issue I understand as  
12 well. Is it time for a recommendation? Does somebody want  
13 to put forward something and see whether there's a consensus  
14 about how to proceed on that issue? I understand there's a  
15 couple different things.

16           Generally speaking it sounds like you want the same  
17 judge that is going to do the hearing to actually do the  
18 prehearing conference and I think we do our best to try to  
19 make that happen but I understand there's exceptions and it's  
20 not -- her discussion about four different people for her one  
21 case is a pretty egregious point, but I know that it does  
22 happen occasionally. So is there something that somebody  
23 wants to put forward? Mr. -- I can't quite see you -- there  
24 you are, go ahead.

25           (Overlapping voices.)

1           **MR. ROSENBAUM:** No, I think the point, whoever,  
2 whether the judge at hearing is the same as the prehearing  
3 judge or not, that judge should be bound by any previous  
4 preconference rulings, which should be contained in the  
5 preconference order.

6           But it seems to me you can't, to the extent that  
7 the judge wants to revisit any of those, then there obviously  
8 has to be notice and time for argument which could be  
9 problematic. But I would say no matter who's hearing the  
10 case bound by earlier rules. Is that --

11           **MS. BROCK:** And I think we should also be able to  
12 still use your challenge even if it's after the prehearing  
13 conference.

14           **MR. ROSENBAUM:** The peremptory challenge?

15           **MS. BROCK:** Yes.

16           **MR. ROSENBAUM:** Maybe we should just go to these  
17 one at a time. I mean (inaudible) that we could --

18           **ADMINISTRATIVE LAW JUDGE CLARK:** If you're making a  
19 recommendation, Mr. Rosenbaum, go ahead.

20           **MR. ROSENBAUM:** That would be -- just keep it  
21 simple. Maybe the others can come up separately.

22           **MS. SAVAGE:** Steve, did you have something to add?

23           **MR. WYNER:** Well, I did. You know, usually all of  
24 the orders that are issued in a case are interlocutory in  
25 nature and don't become final until the final decision is

1 made. So you may have a judge who sits both at the  
2 prehearing conference and at the hearing, and although things  
3 may not have gone the way that the parents might have liked  
4 in the prehearing conference, they go through the entire  
5 trial and somewhere during the trial they're able to convince  
6 the same judge that was at the prehearing conference and now  
7 is listening to the due process hearing, that the judge may  
8 have been wrong. And maybe that judge wants to alter and  
9 maybe that judge wants to proceed.

10           You can't just cut that out and say, well, this  
11 judge who sat for a prehearing conference after thinking  
12 about this file for an hour has got the whole thing down,  
13 understands it pat and these are the issues and that's it and  
14 nothing else will happen, next case. I mean, that may  
15 change. You can't cut that out just because one judge said I  
16 think that --

17           **MS. MC ARTHUR:** That's not the point. We're not  
18 cutting that out. The judge can still respond to changing  
19 his mind after hearing whatever the judges hear. That's not,  
20 that's certainly not the point that I make.

21           **MR. ROSENBAUM:** Yes, Steve, I'm talking about case  
22 management and yes, obviously whether it's the same judge can  
23 revisit that or if it's a different judge but then that's  
24 because there's some cause to revisit the motion or revisit  
25 the ruling at some point during the hearing.

1           But to begin the hearing with whatever the previous  
2 orders are, you know, as to witnesses and amount of time, you  
3 know, issues that are in or out, I think you begin with that  
4 and then of course you can always revisit those in the course  
5 of the hearing. It's just to avoid this problem of having  
6 new rulings on things that were decided by someone before  
7 that.

8           **MR. WYNER:** I don't see the difference.

9           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not sure -- is  
10 there a recommendation on the table or not?

11           (Overlapping voices.)

12           **MR. ROSENBAUM:** Whatever prehearing rulings are  
13 made at a prehearing conference or conferences shall be the  
14 rulings on the starting -- at the time the start of hearing  
15 begins, the first date of hearing. Those rulings will stand  
16 unless reargued with appropriate notice and time to argue  
17 them. Does that seem good?

18           **ADMINISTRATIVE LAW JUDGE CLARK:** Is there a second  
19 of that motion?

20           **UNKNOWN FEMALE:** Second.

21           **ADMINISTRATIVE LAW JUDGE CLARK:** Sacramento, why  
22 don't start? Why don't you vote on whether or not your view  
23 is -- or is there discussion. I don't know how you want to  
24 handle it.

25           **MS. SAVAGE:** Does anyone have any more discussion

1 on it? Any more comment? Okay, who's in favor of having the  
2 hearing start with all orders -- however Steve said it. One,  
3 two, three, four, five. Five in favor. All opposed? Three.  
4 And we have I think a couple people not here.

5 **MR. WYNER:** Can we hear the motion again?

6 **MS. KNOX:** Do you want me to read it, what I have  
7 written? What I wrote and I think I just kind of summarized  
8 it, was that the due process hearing judge will be bound by  
9 the PHC rulings unless reargued with appropriate notice and  
10 opportunity to be heard.

11 **MR. READ:** All right. Southern California, all in  
12 favor? There's six. Looks like six. Everybody. No  
13 opposed.

14 **MR. HARBOTTLE:** Just a comment. I think that's the  
15 law anyway.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, 3f.  
17 Mediations -- request by parties to tape. This is actually a  
18 new -- sort of a new thing that OAH has seen. It doesn't  
19 happen often but it's been happening more frequently where  
20 we're getting a request, usually by an unrepresented party,  
21 to tape record the mediation sessions. And typically we've  
22 denied those requests because mediations are confidential and  
23 there's -- we're not recording them. But if the Advisory  
24 Committee has some input on that I would be interested to  
25 hear your input.

1           **MS. BROCK:** We didn't get to my motion.

2           **MR. WYNER:** That's contrary to the law.

3           **MS. SAVAGE:** Judge Clark? I'm sorry, but Ms. Brock  
4 had a recommendation that we just skipped past before we went  
5 to the mediation discussion.

6           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm sorry. Let's  
7 go back to that then. Go ahead.

8           **MS. BROCK:** I had made a motion that it be allowed  
9 to still utilize your peremptory challenge if you're assigned  
10 a different ALJ after the PHC.

11           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

12           **MR. WYNER:** That would require a change in the code  
13 or regulation which specifically provides the grounds upon  
14 which we can exercise.

15           **ADMINISTRATIVE LAW JUDGE CLARK:** I think, Ms.  
16 Brock, what Mr. Wyner is saying, there are regulations that  
17 govern when you can exercise a peremptory challenge and  
18 certainly changing the judge on the parties may be an  
19 exception so I think that it's already covered. But if you  
20 want to put that forward and have the Advisory Committee make  
21 a recommendation, we can certainly vote on that. So why  
22 don't you state your recommendation one more time.

23           **MS. BROCK:** Okay. I am making a motion to allow a  
24 party to use their peremptory challenge if the ALJ changes  
25 after the prehearing conference.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, any  
2 discussion or a second on that I should say?

3           **MR. CORBIN:** Before discussion I think it would be  
4 helpful for us to have the regulation. I think the Title I  
5 reg on point maybe addresses it and maybe it doesn't, before  
6 we voted on this issue.

7           (Overlapping voices.)

8           **ADMINISTRATIVE LAW JUDGE CLARK:** This is not a  
9 legal, you know, OAH is required to follow the law. Your  
10 recommendations are not binding. If you want to make a  
11 recommendation on this issue that's up to you as an Advisory  
12 Committee to do so. So I'll leave it -- it looks like  
13 there's some public comment.

14           **UNKNOWN FEMALE:** Yes, my comment would be this. Is  
15 it possible given the regulations if someone was to review it  
16 that the peremptory challenge that could be used at the point  
17 of hearing rather than at pretrial hearing, in which case you  
18 don't change the number that's necessary, you simply allow  
19 the person to use it in their trial rather than at the  
20 pretrial level.

21           **MR. WYNER:** My recollection of the rule is that you  
22 have to exercise it before the prehearing conference.

23           **MR. HARBOTTLE:** And that should remain the rule.

24           **UNKNOWN FEMALE:** Thank you.

25           **ADMINISTRATIVE LAW JUDGE CLARK:** And there's

1 another public comment in Sacramento.

2           **UNKNOWN FEMALE:** I think the question, and it came  
3 I think from, the original discussion started with Christian,  
4 where that judge said one thing, I don't remember, and then  
5 appeared and so it may be more very specific to that type of  
6 limited, where the party is under the assumption, I can't use  
7 my peremptory now or I shouldn't because they're not going to  
8 appear -- they've told me they're not going to be my judge  
9 and then they are.

10           So I don't -- I think I might amend Ms. Brock's  
11 motion to be in a very more, much narrower context and it may  
12 not be that it's an automatic grant but that there's  
13 particular consideration given that the party can show that  
14 they wanted to exercise their peremptory before the start of  
15 the PHC. They did not because the judge said I'm not going  
16 to be your judge and that judge then appeared.

17           **MS. MC ARTHUR:** Why would we limit it though? Her  
18 issue is just as valid, that you -- there was no discussion.  
19 Right? Your issue is, I get into a PHC, I don't intend to  
20 exercise a peremptory challenge. I get into a hearing, I get  
21 a judge for whom I would have intended to exercise a  
22 peremptory challenge. I think her point is more inclusive.  
23 It includes yours. Yours does not include hers.

24           **UNKNOWN FEMALE:** But that's not fair. Her point is  
25 well taken.

1           **MS. BROCK:** There may be one particular judge that  
2 I would never use and I would use my challenge if they  
3 weren't originally assigned and then they show up.

4           **MS. MC ARTHUR:** Right. I mean same issue. The  
5 ultimate issue is the ability to -- getting notice of who  
6 your judge is going to be and being able to use the  
7 peremptory challenge. That issue is valid in your example  
8 and is valid in hers. Hers is more inclusive.

9           **MR. CORBIN:** You can only use one peremptory  
10 challenge. You can only use it in a prehearing. If you get  
11 somebody there who says well, I'm not going to be the judge  
12 anyway, why don't you use the challenge against them anyway?  
13 You can only use it once. That way they're not going to come  
14 back.

15           **UNKNOWN FEMALE:** Well, I think the issue would be  
16 if that judge says to me, I'm not going to be your judge,  
17 then I'm going to preserve my peremptory for someone else.  
18 And so I think it's different. I think in your case you're  
19 getting two different -- it's almost like you're getting two  
20 different opportunities to have a peremptory where I think --  
21 I'm fine with getting a one time use of the peremptory but if  
22 you're under the impression that there's a judge you don't  
23 have to worry about and so you choose not to use it, that's  
24 my point.

25           **MS. MC ARTHUR:** I understand that concern. But it

1 seems to me while you're right, there is only -- one gets one  
2 peremptory challenge, the fact that one gets only one is  
3 logically dependent on the assumption that the PHC judge is  
4 the hearing judge.

5 So I don't see a problem in getting two  
6 opportunities if in fact the office switches judges on me.  
7 The whole point of the peremptory challenge before PHC is  
8 that we know the identity of the hearing officer who we're  
9 challenging. So I don't see a problem with --

10 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm going to just  
11 take it back to Chris Knox. She made a suggestion for a  
12 recommendation and if my understanding is correct it is that  
13 the prehearing conference judge is not the due process  
14 hearing judge, we should be able to exercise your peremptory  
15 challenge. That's my understanding. Ms. Savage made a  
16 request to amend it. It sounds like that's not approved so  
17 does somebody have a second for Ms. Brock's --

18 **UNKNOWN FEMALE:** Second.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, and  
20 Sacramento, do you want to vote?

21 **MS. SAVAGE:** Sure. Any further discussion on that  
22 before we vote?

23 (Overlapping voices.)

24 **MR. ROSENBAUM:** Does anyone have the regulation in  
25 front of them? Can someone pull it up on the internet so we

1 can at least see what we're looking at in terms of existing  
2 language?

3 (Overlapping voices.)

4 **ADMINISTRATIVE LAW JUDGE CLARK:** Again, the vote by  
5 this Committee is not going to change the law --

6 (Overlapping voices.)

7 **MR. ROSENBAUM:** But obviously it's helpful to know  
8 what the existing rule is and we maybe can word the motion in  
9 such a way we can deal with the rule.

10 **MS. SAVAGE:** Before, while we kind of have a little  
11 break, there's just a general request to everyone to be  
12 careful about how you're moving things on the table because  
13 the mike's picking up a lot of feedback. So if we can just  
14 kind of watch where we're pressing papers near microphones.

15 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyner, you  
16 have a comment?

17 **MR. WYNER:** Well, it seems to me -- I mean we  
18 either have one peremptory or we have two. This goes on all  
19 the time. You don't always get the same judge for your  
20 motions as you do for (inaudible). That's how some court  
21 systems work.

22 I think this creates the possibility of a lot of  
23 havoc and a lot of postponement. Because nobody's sitting at  
24 the prehearing conference thinking about saving their  
25 peremptory for another judge unless -- you know, why would

1 you do that? It just happens sometimes. You hope you're  
2 going to get this judge.

3 So everybody's agreed to that the first judge --  
4 the judge made an agreement, made some rulings, we've all  
5 agreed that we're going to follow those rules subject to  
6 reasonable notice and request for something to change.

7 But now let's say we all agreed and one side likes  
8 the way the prehearing conference went, the other side  
9 doesn't and now we've got a new judge. I guarantee  
10 somebody's going to exercise their peremptory and we're just  
11 going to start all of this over again. And it's just going  
12 to delay resolution. I think it's a bad idea to mess with  
13 one peremptory.

14 **MS. BROCK:** Well, why don't we table this until  
15 after we can look up the reg and --

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, the request  
17 is to table it until somebody looks up the regulation so  
18 we'll go ahead and move on to the next.

19 **MS. SAVAGE:** I just have a couple of public  
20 comments. One is that there is someone in agreement with the  
21 motion that Ms. Brock made at 11:20 and then the other one is  
22 for later. Okay.

23 **MR. ROSENBAUM:** Judge Varma went to get the regs.

24 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, 3f is the  
25 next thing I want to talk about -- 3f and 3g and then we'll

1 take a quick break. The 3f again, we receive -- it's fairly  
2 rare and it's not common but it's happening more frequently,  
3 typically it's by an unrepresented party, they're asking to  
4 tape record the mediation sessions. We have been saying no  
5 to that but I would be interested in any input that the  
6 Advisory Committee has on that particular subject. Mr.  
7 Wyner?

8 **MR. WYNER:** I have some personal experience with  
9 mediation confidentiality including a recent California court  
10 decision that would be seeking review in the California  
11 Supreme Court.

12 And I don't know, this kind of question of can we  
13 tape it, the next question is, what for? And the answer is  
14 probably, well, so that I can introduce it as evidence. And  
15 the mediation and confidentiality statutes which are in the  
16 California Evidence Code and the (inaudible) Title 5 in the  
17 California regulation, say that these things cannot be  
18 disclosed in a subsequent, you know, except for the purpose  
19 of enforcement. And so I would not participate in a  
20 mediation that was being taped.

21 There are things that you can do at mediation and  
22 have a court reporter present to take down something and  
23 memorialize it but the notion that we've got people walking  
24 around with tapes of what I said in mediation or somebody  
25 else said in mediation and free to go tell somebody that I

1 said this or they said that, you know, (inaudible).

2 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Savage?

3 **MS. SAVAGE:** I think it also raises the question of  
4 what are they taping. Are they taping my caucus, are they  
5 taping their caucus, are they taping when we're together, are  
6 they taping when the attorneys are talking, are they taping  
7 when someone, you know, runs around the block? I mean there  
8 are so many discussions, what would be -- what's getting  
9 recorded? And I agree, why?

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Brock?

11 **MS. BROCK:** You know, perhaps if you would look at  
12 how the mediation agreements or non-agreements are hand  
13 written up, because if an ALJ writes them up and they don't  
14 include everything I can understand why a parent might want  
15 to keep it because there may be information that the ALJ  
16 doesn't quite word or it's worded ambiguously so you think  
17 you're getting one thing and actually you're getting  
18 something else.

19 You know, just on a side note, I've seen hand  
20 scribbled meditation documents and I'm wondering -- this is  
21 kind of off the subject -- if when you can send your ALJ's  
22 out with laptops and a way to print from the printer so that  
23 it's really clear to all the parties what they're getting. I  
24 think some of the confusion comes from, you get a piece of  
25 paper and then what reality is is a little bit different.

1           **MR. CORBIN:** Carl Corbin. Two quick comments. One  
2 is you read it before you sign it. And you make sure that  
3 it's clear what it says. And then second again I absolutely  
4 agree with everybody else. Taping mediations, I just cannot  
5 see why that would ever be a good thing.

6           **MR. READ:** My sense is if we're going to vote, we  
7 might be ready to vote on this because I'm sensing a lot of  
8 disagreement with the motion of taping mediations. So I  
9 would move that --

10           **UNKNOWN FEMALE:** Yes, I'm just wondering if since  
11 OAH has actually received some requests I think it's  
12 interesting that they primarily are from unrepresented  
13 parents. Have these parents actually expressed what their  
14 reasons are? Because I work a lot with unrepresented parents  
15 and (inaudible) parents and I don't know why one would  
16 request. I can see a client of ours potentially making that  
17 request for accommodations for disability that they may have  
18 or because they don't have a laptop computer and have no  
19 other way to take notes. But this is pure conjecture.

20           It would be better to understand why have actually  
21 these parents made such a request since it has been expressed  
22 in the past.

23           **ADMINISTRATIVE LAW JUDGE CLARK:** You know,  
24 typically request is usually just a phone call or a quick  
25 letter saying we want to tape the mediation without further

1 explanation. And so I really couldn't offer what the  
2 rationale is at this point. Have you seen any, Ann?

3 **JUDGE MAC MURRAY:** My sense is because they  
4 (inaudible) that they (inaudible).

5 **MS. SAVAGE:** We have a comment over here.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** Go ahead.

7 **MS. BROCK:** And this is just comments from people  
8 that I know that the reason they want to tape the mediation  
9 is because what is written isn't exactly what was agreed upon  
10 and for an unrepresented parent who doesn't know the law they  
11 think they're getting one thing or they think they're getting  
12 a whole assessment for instance.

13 It might -- you know, they may have asked for a  
14 neuro-psych assessment and the document says -- and they've  
15 all agreed to it within mediation but the document says we're  
16 giving you a full reading assessment, which isn't the same  
17 thing but the parents think that it is.

18 So I can understand why an unrepresented parent may  
19 want some kind of, you know, recording in order to say, well,  
20 this isn't what I thought we were agreeing to.

21 **MS. SAVAGE:** And we have a comment from the web  
22 which is, what's wrong with recording every meeting?

23 **ADMINISTRATIVE LAW JUDGE CLARK:** Is there a  
24 recommendation from the Committee in terms of this particular  
25 issue?

1           **MS. SAVAGE:** Yes.

2           **ADMINISTRATIVE LAW JUDGE CLARK:** Or does somebody  
3 want to make a recommendation?

4           **MR. READ:** If we need to do it in the form of a  
5 motion, I would move that OAH continue its practice of  
6 forbidding tape recording mediation.

7           **MR. WYNER:** Second.

8           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

9           **MR. WYNER:** With a caveat, the parties are free to  
10 agree to counter or waive.

11           (Inaudible.)

12           **ADMINISTRATIVE LAW JUDGE CLARK:** Is it your motion  
13 as amended, what's the --

14           **MR. READ:** I don't know.

15           (Overlapping voices.)

16           **ADMINISTRATIVE LAW JUDGE CLARK:** The recommendation  
17 is that taping mediation should not be permitted.  
18 Sacramento, you want to vote on it?

19           **MS. SAVAGE:** Can we -- we have a couple of people  
20 who have further discussion.

21           **MR. ROSENBAUM:** I just want to -- Steve -- respond  
22 to Tammy Brock's point. I think that ambiguity which comes  
23 up a lot will be there with or without the tape recording and  
24 I think it's incumbent on the parties, and I know this can  
25 be -- you get a lot of pressure at the end, things are

1 written up quickly, they're not clear, and it's only later  
2 you discover those kinds of things. But that debate's going  
3 to happen whether you tape it or not. So in your scenario  
4 you taped it, then you go back in and you replay that portion  
5 of the tape and, no, I said this, you said that, but you're  
6 still going to have that debate later whether you tape it or  
7 not so I don't think that's a good way to take care of the  
8 problem although it clearly is a problem because I would  
9 favor not taping.

10 **MS. STEELE:** Janeen Steele. The only thing is -- I  
11 agree and I'm not one to support necessarily tape recording  
12 but I also work with non-represented parents and my concern  
13 is the Bright Line Rule because I don't know about you guys  
14 but I don't have a mediation settled in one day.

15 So for parents that go 'why' and they go back  
16 later, they may not have taken notes and they have literacy  
17 issues. They may not have been interpreting correctly.

18 I mean that's my only concern that there may be  
19 some exception that if the mediator wants to and the parent  
20 wants to make that request and there is some reason for it  
21 I'd hate to have a prior line of rule at that point and  
22 though it may be something that we won't do because we're  
23 attorneys but if a parent has one of those issues and they  
24 explain it, not just say I want to tape record (inaudible)  
25 meeting but if they're going to (inaudible) back afterwards,

1 that's my concern. They may not have notes like we may have  
2 notes.

3 **MR. HARBOTTLE:** My only comment on that is while I  
4 understand that I think everybody understands that these are  
5 voluntary so if one party requests tape recording even if  
6 there was an order that it could be tape recorded, I think  
7 Steve mentioned earlier if the other party didn't want to  
8 participate they could simply decline to participate.

9 So I'm not sure whether OAH could do anything other  
10 than it's doing. I don't think you have -- you could  
11 actually order a party to participate in any case regardless  
12 of whether it was taped or not.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Mediation is a  
14 voluntary process.

15 **MS. SAVAGE:** We have another comment.

16 **UNKNOWN FEMALE:** I have a couple of questions. So  
17 deciding this, would that preclude people that needed that  
18 accommodation? It just seems to me that that would pretty --  
19 it's a very far-reaching --

20 **MS. SAVAGE:** I think (inaudible). We have one  
21 webcast comment that they agree with the pending motion.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** So Sacramento, do  
23 you want to vote?

24 **MS. SAVAGE:** Sure. Okay, all in favor of the  
25 motion not to record mediations. One, two, three, four,

1 five, six. Opposed? Two.

2 **ADMINISTRATIVE LAW JUDGE CLARK:** And then Los  
3 Angeles? All in favor of the motion? Five. All opposed?  
4 One. Okay.

5 This final thing before we take our break here, I  
6 just need to go back to Ms. Brock's issue, too, but 3g is  
7 probably more a comment for the meeting that anything that we  
8 need discussion from. I probably should have put it in my  
9 update, but, you know, we're using the continuance forms. I  
10 appreciate the parties using those forms. It's very  
11 straightforward. Our continuance forms are available online  
12 when the parties agree and just give us the dates and even  
13 just a brief sentence or two about why they need a  
14 continuance is really helpful, but when you turn in  
15 continuance forms, every party needs to sign it or agree to  
16 the continuance.

17 So it can't just be that the district and the  
18 student without Mental Health and Court Office of Ad or any  
19 of the other parties that are involved. Everybody has to  
20 agree to the continuance or you don't have a continuance of  
21 the matter. So that's just my comment.

22 If there's any comments from anybody on the  
23 Advisory Committee please go ahead and make them at this  
24 point. And if not we can go back to the issue about  
25 peremptories.

1           **MR. WYNER:** Can we still use the forms if we want a  
2 request?

3           **ADMINISTRATIVE LAW JUDGE CLARK:** With both parties?

4           **MR. WYNER:** No, just yourself. (Inaudible).

5           **ADMINISTRATIVE LAW JUDGE CLARK:** You can use the  
6 form and we wait for the appropriate amount of people to  
7 respond and stuff, yes. You can use the form. Anybody can  
8 use the form. It's designed for everybody to agree but you  
9 can certainly use the form for your side and just wait for  
10 the opposition to send something in saying we agree or don't  
11 agree.

12                   Does somebody have a copy of the reg in Sacramento?  
13 One of our audience members here has a copy of it on her  
14 smartphone. I'm not sure what you wanted to read  
15 (inaudible).

16           **MR. ROSENBAUM:** Judge Varma was looking it up so  
17 maybe after the break we can take up the question again.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** I was hoping to  
19 close on Item 3 before the break.

20           **MR. ROSENBAUM:** Well, one can always be hopeful.  
21 (Overlapping voices.)

22           **UNKNOWN FEMALE:** (Inaudible) of the AP regs is  
23 pursuant to section 11425.40d, a party is entitled to one  
24 disqualification without cause of a presiding ALJ. A  
25 peremptory challenge will be granted in any OAH hearings

1 pursuant to the following. A, a party is not entitled to a  
2 peremptory challenge in any proceeding relating to  
3 applications for temporary or interim orders. B, the  
4 peremptory challenge shall be directed to the presiding judge  
5 or designee or (inaudible) ALJ. C, the peremptory challenge  
6 shall be made by the party, attorney or authorized rep  
7 appearing in any proceeding by oral or written declaration  
8 consistent with the requirement in paragraph I below. D,  
9 notice of a written challenge shall be served on opposing  
10 parties. E -- I think this is the one -- if a prehearing  
11 conference is held and an ALJ has been assigned to the  
12 hearing then any challenge to the assigned ALJ shall be made  
13 no later than commencing on the first PHC where the hearing  
14 ALJ is assigned.

15 (Overlapping voices.)

16 **MR. WYNER:** That may be one of the procedural  
17 rules.

18 **MR. HARBOTTLE:** There are three separate  
19 subsections but she's right.

20 **MR. WYNER:** There may be a separate rule for  
21 Special Education mediators.

22 **MR. HARBOTTLE:** I think these have been adopted by  
23 OAH and there are three separate subsections dealing with  
24 other alternatives.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** Does that answer

1 the question, Mr. Rosenbaum?

2 **MR. ROSENBAUM:** I didn't tape it so I didn't retain  
3 all of the (inaudible) so Carl Corbin is looking it up. I  
4 mean it has, yes, it sounds like it may answer. I think  
5 there is some ambiguity still in that subsection. But again,  
6 who is the assigned judge? Is the assigned judge the one who  
7 was presumably assigned or is the judge who was actually  
8 assigned?

9 But again I don't want to belabor the point. I was  
10 just trying to see if there was a way to address Tammy's  
11 motion that would be consistent the existing regulation  
12 because we're not petitioning for a new rule here.

13 **MS. BROCK:** What is the latest that you would  
14 reassign a judge other than, you know, a (inaudible)?

15 (Overlapping voices.)

16 **MS. BROCK:** Other than just showing up. I mean  
17 couldn't you know, I mean they would have to know --

18 **UNKNOWN FEMALE:** I think that's part of the  
19 problem. Sometimes you show up and who's posted on the web  
20 and is a different person than was showing.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** We should be  
22 providing notice to you if we're changing the hearing judge.  
23 You should be getting notice, either written or usually it's  
24 a phone call telling you we have changed the judge assigned  
25 to your hearing. We're trying to do that in advance. So

1 that is the directive and that's what our staff should be  
2 doing. So at this point are you ready to vote on it or not  
3 is the question?

4 **MR. ROSENBAUM:** Judge Clark, so are you saying that  
5 notice will always be made before a prehearing conference?

6 **ADMINISTRATIVE LAW JUDGE CLARK:** No.

7 **MR. ROSENBAUM:** See that's the problem. Because if  
8 you could then I think it would be consistent with the  
9 regulation that it would work. One could make the challenge  
10 and can do at the start and go ahead with the prehearing with  
11 this particular judge but we know this won't be the one at  
12 hearing.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Here's the thing.  
14 We are required to follow all the regulations. I think our  
15 office does that. There are exceptions when a prehearing  
16 conference is held and the person who does your prehearing  
17 conference is the person you expect to be the judge but the  
18 judge becomes unavailable. Maybe they're in another hearing,  
19 maybe they're on vacation, maybe they have a medical leave.  
20 Any number of things could happen. Emergency in the family.  
21 And they're no longer assigned to the hearing.

22 I think that there is a provision to allow a  
23 peremptory at that point in time but I'm not going to comment  
24 on the law. I'm going to let you decide. I don't think  
25 there's any reason to make a vote on this because again it's

1 addressing legal issues as opposed to things that the  
2 Committee really has control over.

3 Ms. Brock has made a motion and I'm allowing the  
4 Committee to vote on that. If it's withdrawn, it's  
5 withdrawn. But at this point I think we should vote on it  
6 and then we'll move on to the next items on the agenda.

7 So Ms. Brock, please state your motion again or  
8 your request and we'll have a vote on it.

9 **MS. BROCK:** I am making a motion that parties be  
10 allowed to use their peremptory challenge after the PCH (sic)  
11 if they did not have an ALJ assigned at the time of the PCH  
12 (sic) or PHC. PCH is a highway.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Or if the judge  
14 changes after the prehearing conference.

15 **MS. BROCK:** Changes afterwards. Right.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Sacramento,  
17 all in favor of that motion?

18 **MS. SAVAGE:** One, two, three, four. All opposed?

19 **ADMINISTRATIVE LAW JUDGE CLARK:** All opposed?

20 **MS. SAVAGE:** One, two, three. And abstain, one.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** And Los Angeles?  
22 All in favor of that motion? One. All opposed? One, two  
23 opposed. Any abstains? Three abstentions. Okay.

24 **MS. SAVAGE:** Judge Clark, before we take a break we  
25 have a public comment on the mediation recording that I

1 wanted to get in.

2 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes.

3 **MS. SAVAGE:** It comes from a parent who  
4 participated in two mediations. "Often the counsel has  
5 referenced items to which I was unaware and would like to  
6 reference later. A taped copy of the mediation would allow  
7 me to later reference the material and would not be subject  
8 to transcription errors or lack of memory of regional center  
9 counsel. It seems unreasonable to deny recordings across the  
10 board. At least allow prior notification before allowance."

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you  
12 for that. Let's take a 10-minute break. I have 10 to 12.  
13 Let's come back at 12:00 and we'll continue the meeting.  
14 Thank you.

15 (Overlapping voices.)

16 **ADMINISTRATIVE LAW JUDGE CLARK:** You have some  
17 questions and concerns about this. We'll take it from there.  
18 Ms. Knox?

19 **MS. KNOX:** I do. I guess my biggest concern is  
20 that there seems to be the practice that attorneys are now  
21 issuing their own SDTs. We had attorneys that get very  
22 aggressive in the issuance of and threaten legal criminal  
23 action against non-parties that don't comply.

24 And then when we show up at hearing, an ALJ will  
25 quash the subpoena that was issued by the parent because it

1 wasn't issued by an ALJ.

2           So there's just some real inconsistencies. And it  
3 seems that my reading is that a subpoena duces tecum can only  
4 be issued by an ALJ and I think that's the practice that  
5 should be followed.

6           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Has anybody  
7 else have any issues or concerns with subpoena duces tecums?  
8 The audience in Sacramento?

9           **MS. SAVAGE:** Yes, we have.

10           **UNKNOWN FEMALE:** As a parent I had an attorney  
11 issue one to my provider threatening her with criminal action  
12 and jail and she was out of the state, and I believe out of  
13 the country in Costa Rica at the time. And they tried to  
14 then threaten that even though she was gone that she hadn't  
15 complied. And they also did not notify her regarding the  
16 proper amount of days she had to reply or actually they  
17 served this on her inappropriately.

18           This nice provider woman, who is an instructor, had  
19 no idea and had to hire a private attorney to inform her that  
20 this was actually not a properly served or appropriate piece  
21 and it was used quite abusively in our case and scared a nice  
22 little old lady. It was very inappropriately used and is  
23 commonly used from what I understand.

24           **UNKNOWN FEMALE:** I've had a problem with opposing  
25 counsel changing the wording on the standard subpoena duces

1 tecum to reflect having the documents go to the attorney's  
2 office and changing the dates to a date prior to the hearing.  
3 So they're basically changing the nature of the subpoena from  
4 a subpoena duces tecum to a discovery subpoena which I've had  
5 to point out is not okay. It's a subpoena duces tecum to  
6 show up at trial with the documents.

7           The other problem I've noticed is districts seem to  
8 get free rein on if they want documents they get them and  
9 when I try to get a documents through a subpoena, mine are  
10 routinely quashed because I'm asking for more than student  
11 records or I'm asking for more than something and there  
12 appears to be a test that's applied to the parent's request  
13 that isn't applied to the district request.

14           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you.  
15 Ms. Steel we have some comment here first.

16           **MS. STEEL:** Yes, we had the same issue where the  
17 subpoena duces tecum was served on doctors by the parent with  
18 a request for medical records and was not served on counsel  
19 and it was quashed but it still should just not happen.  
20 Because (inaudible) served asking for medical records without  
21 following basic procedures. I mean that was just --  
22 especially if it's an attorney.

23           **ADMINISTRATIVE LAW JUDGE CLARK:** In Sacramento?

24           **MR. CORBIN:** This is Carl Corbin. Just to be fair,  
25 I've had unrepresented parents send me a whole slew or

1 variety of these subpoena duces tecum and for personal  
2 appearances that were filled out in very odd and unusual  
3 fashion. So it sounds like there may be an issue that  
4 crosses the board for both districts and parents.

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Ms.  
6 McArthur?

7 **MS. MC ARTHUR:** This is a common, but kind of an  
8 addition to the issues that come up with subpoenas. I've had  
9 attorneys serve subpoenas by fax but I think it's pretty  
10 clear in terms of which APA provisions apply and which don't  
11 and I believe it has already been covered in at least one  
12 case by OAH in terms of, you know, the impropriety of serving  
13 by fax. But if there's anything that others have to say  
14 about it I'd certainly like to share them.

15 **MS. DOME:** This is Dora Dome. The only question I  
16 just had is whether or not lead is required to file subpoena  
17 duces tecum prior to issue it.

18 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Mr. Wyner,  
19 go ahead.

20 **MR. WYNER:** I would have to say that I share with  
21 you that school districts seem to have an easier time  
22 enforcing SDTs in front of OAH.

23 But I think one thing you have to realize is almost  
24 everything that the school wants -- I mean one way that they  
25 can go at a parent is to get all the medical records of the

1 kid. And it's pretty hard to show that, you know, a disabled  
2 kid's, you know, medical records wouldn't be relevant to the  
3 case, but you've got to remember nobody's allowed to conduct  
4 any discovery and the problem that I have would be subpoenas  
5 is -- because I've used them and I've prepared them and I've  
6 served them and I certainly don't think we need now to add  
7 another layer to OAH's duties that a judge has to issue them.

8 I mean if some lawyers are repeatedly doing these  
9 things there's a state bar, you can file a complaint against  
10 them, you can order 508s that they're doing this repeatedly,  
11 it's harassment, but it seems to me that what I just -- what  
12 I don't like is when they're served and they're served  
13 calling for the production of documents before the hearing.

14 These subpoenas are limited to production of  
15 documents at a hearing on a date certain. Nobody should be  
16 serving a subpoena and saying show up at my office on such  
17 and such a date and bring all your records and we'll copy  
18 them. I mean are we talking about someone doing that?

19 **UNKNOWN FEMALE:** Yes. Repeatedly.

20 **ADMINISTRATIVE LAW JUDGE CLARK:** It sounds like --  
21 it sounds like that's something of concern. Any other  
22 comments?

23 **UNKNOWN FEMALE:** Just that the situation that I had  
24 is I issued a subpoena duces tecum for a hearing for records  
25 and when I got to the hearing the ALJ quashed the subpoena

1 because I had issued it and it had not been issued by an  
2 administrative law judge.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** From what I hear  
4 from the parties I think OAH may need to reexamine how we're  
5 doing subpoena duces tecum and also the personal service  
6 subpoena which I think is just a sub-issue here. It's really  
7 more the SDTs.

8 I think just some of the decisions that are -- the  
9 orders that have been issued by some of the different judges  
10 sort of highlights the (inaudible) and the inconsistency. So  
11 I've seen that now and the fact that it's brought up here as  
12 well is a concern, so I think we have to work on tightening  
13 up that process.

14 If there's a recommendation that you want to make,  
15 I would certainly take that into consideration. I will just  
16 assure you that from my side I will look into the issue and I  
17 will make sure that we're complying with the law and that we  
18 tighten up our procedures so that we're complying with the  
19 regulations and the statutes that cover issuing subpoena  
20 duces tecums. Because I'm not convinced that we are in every  
21 case now. So, Mr. Corbin?

22 **MR. CORBIN:** Yes, Judge Clark, in the parents  
23 handbook, I guess that's what we're still calling it, but the  
24 procedural explanation of the process -- I know that there is  
25 a section -- I flipped to it, what OAH says on this issue.

1 I would encourage once OAH looks at its process and  
2 makes the changes to clarify in there as specifically as you  
3 can because both districts and parents look at that  
4 information and rely upon it and you can tell even -- I have  
5 an issue with things such as you can't -- it is not  
6 appropriate to deal with this subpoena. I think that would  
7 probably be helpful.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. So update  
9 the user guide with whatever, if there's a change. I  
10 understood. Thank you. I will do that.

11 Any other questions or concerns -- Ms. Dome?

12 **MS. DOME:** So pending you all going through that  
13 process and kind of streamlining the process, what are you  
14 recommending for attorneys to do? Because to avoid the  
15 situation that Christian has identified, that's happening for  
16 district counsel as well that they're showing up and it's  
17 being quashed by the ALJ because it was not -- they didn't go  
18 through the ALJ. So are you saying that we need to do that  
19 from now to ensure that --

20 **ADMINISTRATIVE LAW JUDGE CLARK:** I will say that  
21 you need to read the regulation and any other provisions that  
22 apply and make sure you're following those regulations. And  
23 if that says that they should be going to OAH or you should  
24 be seeking judicial or an administrative law judge approval  
25 of a subpoena duces tecum, then you should be following that

1 process.

2 I will expedite our review of the process. I will  
3 make sure we get that done quickly so that we can give you  
4 guidance so that you're not in the dark on this issue. That  
5 is going to be a priority for me and my office to make sure  
6 that we can get that situation under control.

7 **MS. SAVAGE:** We have another comment.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Go ahead.

9 **MR. ROSENBAUM:** Judge Clark, Stephen Rosenbaum. I  
10 think to be more particular in the recommendation, I think  
11 the problem arises because attorneys may issue their own  
12 subpoenas under the statute under the government code,  
13 11450.20, 11450.20. Whereas unrepresented parties have to go  
14 to the hearing officer or to OAH.

15 If there's a way when you review the procedure to  
16 try and bring some equity to that process, part of it may be  
17 Carl's point about updating the handbook but also some way to  
18 expedite maybe that unrepresented parties request so that  
19 they're closer to the position of an attorney who is able to  
20 issue her own subpoena without having to go to OAH. So that,  
21 I would call attention to that provision.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you.

23 **MS. BROCK:** Isn't the document, the subpoena, the  
24 empty subpoena, on the form, I mean it's on the website and  
25 shouldn't we just use that?

1           **MR. ROSENBAUM:** It has to be. Right, it has to be  
2 issued by OAH or presiding judge or an attorney to do it and  
3 an attorney can do it.

4           **MS. BROCK:** But can't a parent --

5           **MR. ROSENBAUM:** No. That's not how the statute --  
6 unless I'm reading it wrong.

7           (Inaudible.)

8           **ADMINISTRATIVE LAW JUDGE CLARK:** Is there any  
9 further discussion or if they can who wants make some kind of  
10 a recommendation and I'm certainly open to it and I'll leave  
11 it over to you at this point if there's any further  
12 discussion or Ms. Knox, do you want to make a recommendation  
13 or have you said your piece so to speak?

14           **MS. KNOX:** I think I've said my piece. I just --  
15 you know, I would encourage OAH to follow the law. I mean  
16 that's --

17           (Overlapping voices.)

18           **MS. KNOX:** -- if consistently everyone were  
19 following the same way.

20           **ADMINISTRATIVE LAW JUDGE CLARK:** All right. Thank  
21 you. That's very, very good.

22           Anything further on this issue? If not we'll go  
23 ahead and move on to the question or agenda item 5 which is  
24 just the Advisory Process, just a general discussion.

25           We're coming down to the end of the first year that

1 we've, you know, we've been sort of trying to tweak the  
2 process and try to make it the most efficient that we can and  
3 I want to have input from you if there's a way to improve the  
4 process. If there's something different that we're doing, do  
5 you like making recommendations? Do you not want to make  
6 recommendations? Do you want to just sort of have a general  
7 discussion like this so we're at least airing the issues and  
8 OAH can take it under advisement?

9           The composition is another issue that we can  
10 certainly address. We talked about it at the end of last  
11 year right before the end of the fiscal year last year. The  
12 applications are available again here now and they're going  
13 to be available online and I'll send out notice to ListServe  
14 that we have the applications available and basically  
15 starting in May you can start turning those in for the next  
16 year. Does anybody have any feedback about this process?

17           **MS. SAVAGE:** I do.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Savage?

19           **MS. SAVAGE:** I prefer the format of just having a  
20 fluid discussion as opposed to recommendations because I just  
21 become frustrated that we might reach agreement on what a  
22 recommendation would be and then it doesn't get acted on.

23           And if we're really here more of a discussion and  
24 OAH is going to take what we have to say, more just kind of  
25 all our agenda of what we have to say, and figure out do you

1 want to make the policies or not, I think that's -- to me  
2 that's a better way versus having us feel like we're making  
3 this recommendation and to some extent if it's kind of a  
4 group consensus then it should be happening.

5           And so I feel like it's better for us if it's just  
6 more of a facilitated structured discussion versus then we  
7 have these recommendations and we're going to get some  
8 fallback. That's just my opinion.

9           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Anybody  
10 else have any input?

11           **MR. HARBOTTLE:** I think that's -- I like that idea.  
12 What I like about having recommendations, though I really do  
13 agree with the point you made about the fact that they're not  
14 followed through on and there's disappointment, but it's nice  
15 to have a sense of consensus.

16           If there's a strong view I think voting is a good  
17 idea in the sense that you know then who would have been, of  
18 the people in the room, who feel strongly one way or the  
19 other. And we know what we need to do. The formal  
20 recommendation just sort of gives a general sense of support  
21 for the proposition or is it really like a mediation taping  
22 issue, sort of dead in the water and let's not follow through  
23 on that.

24           So I don't know if there's mean in the middle there  
25 where we have list of sort of points on which there was some

1 general agreement and those are the ones that you would  
2 follow through on.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyner?

4 **MR. WYNER:** Yes, I can't support what Roberta's  
5 saying right now though I usually agree with everything she  
6 says. Unless you put something out -- they can say no. I  
7 mean we know that for the most part they're going to say no,  
8 we're going to argue one thing, the school's going to argue  
9 one thing, the hearing office says they'll follow the law.

10 That was not a joke, please. And unless we make  
11 recommendations, you know, they would have to start, I said  
12 this and Roberta said that, and you know, Dan said the other  
13 thing and they wouldn't have anything to respond to. I think  
14 at least give OAH a focus where they can say all right, so  
15 many of them agree on this cockamamie idea and do you want to  
16 do it or not? Otherwise, you know, it's just a big  
17 conversation.

18 **MR. HARBOTTLE:** There needs to be some focus.  
19 There's six people here, there's ten there, something like  
20 that.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** I think there's  
22 eight up there today.

23 **MR. HARBOTTLE:** Okay. There is 14 people -- if 13  
24 feel that x is good up here then that's a much different  
25 thing than, you know.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Well, I think  
2 today we had a little -- I think we've had a little bit of a  
3 hybrid because you had some general discussions where you can  
4 tell there's no real consensus but it's important. Then  
5 there are other things that did have a consensus and you did  
6 make recommendations. So I think it's a bit of a hybrid  
7 maybe and maybe that's the best way to handle it. So, Ms.  
8 Taylor?

9           **MS. TAYLOR:** Yes, I think there could be structure  
10 and focus without voting but I have to say in the past there  
11 wasn't. Before there were recommendations and voting, these  
12 meetings -- I wasn't part of the Committee but I attended  
13 them and there was no structure to the discussions.

14           It was generally an opportunity to vent  
15 frustrations which is good but it stopped at the venting.  
16 There wasn't any productive discussion. So I like the  
17 opportunity to have recommendations and voting because I  
18 think it lends that extra level of structure and focus to the  
19 group.

20           **MR. READ:** I agree with that. And I would say that  
21 the last two years the Committee, both Northern California  
22 and Southern California, have developed a better sense of  
23 what we can actually impact as opposed to trying to change  
24 laws and regulations which we want to be able to impact but  
25 this is not the forum for that.

1           And I agree with the sentiment of having some type  
2 of vote, some type of indication of what each location feels.  
3 I feel the caveat to that would be that a number of us are  
4 lawyers and we spend a lot of time trying to get the exact  
5 wording of a motion before we give our vote either for or  
6 against it and I would think that, you know, we don't need to  
7 be that precise.

8           There's a general sentiment and we can either  
9 indicate that we're for that sentiment or against it without  
10 going back and forth and worrying about whether we've amended  
11 a motion or not.

12           **MS. SAVAGE:** Steve?

13           **MR. ROSENBAUM:** Yes, well, I agree with a couple of  
14 things Jonathan said. Yes, I like the last point there. I  
15 think overall I like the hybrid approach.

16           The fluidity of the discussion is good, it could be  
17 a structured discussion, so it doesn't have to be a venting  
18 session per se, but it could be on topic and then I think  
19 emanating from that should come recommendations, whether it's  
20 at the same meeting or a successive meeting and the idea of  
21 trying to reach a consensus at least makes sense.

22           But sometimes we reverse the process. We get into  
23 the technicality of the motion first before we've really had  
24 a chance to fully discuss it. I disagree though about this  
25 point about influencing the law because I think even though

1 we're bound by the regs and statutes now, there could be  
2 opportunities to change, you know, move the rule, make  
3 petitions or to look down the road and do our own independent  
4 lobbying on things that we think are worthwhile changing over  
5 time or looking again at OAH practice, policy and practice.

6 So I think there is a fine line between what is  
7 law, what is policy and what is fodder for this particular  
8 Advisory Committee. But I like the joint approach. Some  
9 open discussion and then some closed recommendations at the  
10 end.

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, in  
12 Sacramento in the audience?

13 **UNKNOWN FEMALE:** Yes, I have a question -- have a  
14 little bit of a suggestion. Advisory panels happen very  
15 infrequently, pretty far apart. Now what are the things that  
16 people will have to remember exactly on this date in six  
17 months? That's a little bit difficult. Is there a way that  
18 we could look at developing a written (inaudible) outside to  
19 contribute between the meetings to this that could be  
20 (inaudible) a parent can be here. I'm a parent. Could we  
21 try to maybe find a way that we can allow for input besides  
22 the actual meeting times?

23 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, I think  
24 that's a good idea, a good suggestion, but that's generally  
25 the -- the names and phone numbers and email addresses of the

1 Advisory Committee are posted on our website and you're  
2 encouraged to contact them if you're having issues.

3 I'm always available to talk about the process and  
4 concerns that parents are having or anybody is having for  
5 that matter. District personnel, attorneys for parents,  
6 whoever it happens to be. Because I think my role is and my  
7 desire is to improve the process, improve the accessibility  
8 and make it a streamlined process that works for everyone,  
9 that takes into account that we have a huge government  
10 organization that we have to operate, that you have law  
11 practices and families and advocates, educational advocate  
12 businesses that you have to run as well.

13 So it's in everybody's best interest to have a  
14 process that works and makes sense for everyone. And that's  
15 what this whole Advisory process is about. Just because --  
16 you don't have to wait six months to bring an idea to me or  
17 bring your concerns because I want to know about it and if  
18 it's something we can tweak or change quickly I want to do  
19 that.

20 But it typically works to have these meetings --  
21 we're required to have them at least twice a year and it  
22 works better for people's scheduling and the ability for  
23 people to show up to hold to two consistent meetings. Ms.  
24 Savage?

25 **MS. SAVAGE:** What I'm wondering with respect to the

1 parent comment is, is it possible on the Advisory Committee  
2 web page that there be a link that people could, not at these  
3 meetings but at different times throughout the year, could  
4 submit comments for discussion or comments for topics, much  
5 like we had done before.

6           It was the Committee trying to identify what the  
7 agenda would be. But this would be just a link on your  
8 website that says if you've got an issue that you want the  
9 Committee to consider at its next meeting, click here and,  
10 you know, type in an email and it will get sent to you or  
11 whomever, who then would take that over for developing the  
12 agenda.

13           And in terms of kind of the format, I just am --  
14 I'm frustrated by that recommendation but I agree with kind  
15 of having a little more structure so that we talk about and  
16 if there is some type of -- yes, it all seems like it should  
17 go this way, I think that works. I just -- I really fight  
18 this, we have this issue and we have to have a  
19 recommendation.

20           I think I'm in agreement with the hybrid approach  
21 that people are talking about.

22           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. I actually  
23 like that idea. We do have a form on our website now where  
24 you can send questions to OAH through the website and I'm  
25 certain that it wouldn't be too hard to develop a link for

1 the Advisory Committee, too, so I'll have somebody look into  
2 that. Good idea.

3 **MS. SAVAGE:** We also have another public comment  
4 and then I've got (inaudible).

5 **UNKNOWN MALE:** Hi, I would go along with the kind  
6 of hybrid approach, too. One of the things I noticed, the  
7 group is developing better over the last year or two but it  
8 occurs to some extent -- there's recommendations that are  
9 motions and motions kind of think, let's go to Robert's Rules  
10 of Order kind of way of going about things. Is that how the  
11 Advisory Committee is going to operate? Motions, seconding,  
12 voting, somebody should probably write down the motion  
13 someplace so you know exactly what you're voting on.

14 Also the -- I'm not sure how the agenda was built  
15 this time but I remember in the past it was the result of  
16 about a hundred emails going back and forth. And I'm not  
17 sure how it was done this time if the agenda has not been  
18 advanced and posted so people can comment on the agenda while  
19 it's passed through whatever method, I think it might be  
20 helpful.

21 Also has there been some decision made regarding  
22 the length of term for the Advisory Committee person? Is it  
23 two years alternating? Is it one year? Do you decide half?  
24 Is there any discussion on that?

25 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, it really

1 wasn't decided last year. Last year it was intended -- it  
2 sort of worked out through attrition that we basically had  
3 about half the Committee that stepped off and half stayed on.  
4 There were a couple of people who had applied and there were  
5 staffings at OAH that didn't get them back on the Committee  
6 but that's also up for discussion again this year as we  
7 continue to tweak this process. One year terms, two year  
8 terms, staggered terms?

9 **MS. SAVAGE:** Before we go there, I have a public  
10 comment on what we were talking about in terms of the focus  
11 of the meetings.

12 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

13 **MS. SAVAGE:** There's a public comment. Just as a  
14 community advisory committee, your group operates as an  
15 advisory board only. Ultimately the State has entrusted OAH  
16 to make decisions in regards to policies and procedures.  
17 Brown Act training and Roberts Rules of Order might be  
18 helpful for all Advisory Board members from a neutral  
19 (inaudible).

20 **ADMINISTRATIVE LAW JUDGE CLARK:** Is there another  
21 public comment?

22 **MS. SAVAGE:** No, that was just on the -- I just had  
23 one on that. I have a whole stack that are coming.

24 **UNKNOWN FEMALE:** Sorry to be so outspoken. I just  
25 want to make an observation from a first time observer. And

1 number one, I thank everyone who is on the Committee because  
2 it's amazing that these people put their time in and sit here  
3 and think about these issues that are so important to school  
4 districts and parents. And so I want to thank everyone here  
5 for taking that time from my perspective and my child's  
6 perspective.

7           But in watching the procedures, there's no  
8 recommendation. There's no whitepaper or something emanating  
9 from this. It seems to me a really nice coffee klatch. I  
10 think the importance of what's happening here is so strong  
11 really.

12           I think that the Advisory Board and the willingness  
13 of OAH to listen to the advice is a very good forum and that  
14 some formalization without getting -- you know, I love the  
15 open discussion. That's a very important thing. But to have  
16 some idea and then finally some communication of that in a  
17 formalized manner even to OAH's recommendations like other  
18 councils might be a really positive step for the people  
19 putting in this amount of time to have what they're standing  
20 behind and what their positions are heard and then  
21 memorialized.

22           And it it's not being then I think it's like people  
23 talking and then it kind of evaporates in a sense for people.

24           I think, too, that there is a tremendous amount of  
25 willingness to discuss and you would never want to cut that

1 off. By opening that website kind of thing where people can  
2 comment and set agenda items it would be brilliant. I mean  
3 it would be -- it would only make this more effective.

4           So in a very positive way I think you have an  
5 opportunity to input as both families and maybe this room  
6 should be bigger. We should have more people aware of what's  
7 happening here. It has a real positive tone and a very  
8 positive potential.

9           But I don't think without recommendations that we  
10 really have it or without rules or without eventual emanating  
11 documents that go to OAH that set -- someone might hold them  
12 accountable for them at least to take the time to consider as  
13 Judge Clark -- because we won't always have Judge Clark like  
14 we do today but we do have other people that might not and so  
15 it gives you validity. It honors your time and it honors  
16 what you're saying.

17           I also lastly would like to say that this process  
18 of discussion is so beautiful but at the same time people are  
19 making decisions on issues that might be very important and  
20 recommendations within seconds or minutes of the discussion.  
21 And it seems to me by having prior notice of this so they can  
22 prepare or think about those that it might be important to  
23 really consider these items a little further or at least have  
24 lunch to discuss it amongst yourselves than make these kind  
25 of make these quick and off the cuff recommendations that

1 could be, I think in the long term, very effective and  
2 potentially positive for all parties.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. McArthur?

4 **MS. MC ARTHUR:** You know, I just -- you've said  
5 this so well that I simply want to say A, I echo what you've  
6 said. I thank you for the decency and (inaudible) with which  
7 you addressed the Committee.

8 I think the very purpose of the Advisory Committee  
9 would be lost without the clarity that recommendations,  
10 voting and indeed OAH's response to the recommendations,  
11 brings. We need to know, parents as well as school districts  
12 need to know that there has been some thought given to the  
13 representative input that has been given by the Committee  
14 members and I think that's done through those recommendations  
15 and voting and then subsequent response.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, thank you.

17 **ADMINISTRATIVE LAW JUDGE CLARK:** How about the  
18 length of the meetings? We set aside -- I'm sorry, Roberta.

19 **MS. SAVAGE:** I have another one from Mr. Rezowalli.

20 **MR. REZOWALLI:** Hi, just a comment about -- I don't  
21 know how long ago. When we had separate northern staff  
22 meetings, there was a Southern California meeting that didn't  
23 result in recommendations and so there wasn't a response  
24 back.

25 **MANY VOICES:** Yes.

1           **MR. REZOWALLI:** Northern California made  
2 recommendations on the agenda and Southern California didn't  
3 and so there was no response from OAH because there wasn't  
4 recommendations made. I just wanted to make that comment  
5 because it's happened in the past.

6           **ADMINISTRATIVE LAW JUDGE CLARK:** Another question.  
7 I think in the past there were two meetings. OAH responds to  
8 whatever they receive in writing so if they didn't receive it  
9 from the Southern California Committee then there was no  
10 response to anything from Southern California.

11           But I think last time it was a joint meeting and I  
12 think we only received the information from Northern  
13 California but those notes which they sent covered the  
14 recommendations and the vote from Southern California as well  
15 so -- pardon me?

16           **UNKNOWN FEMALE:** (Inaudible.) I had extensive  
17 notes.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, they never  
19 made it to Sacramento. Or they never made it to me anyway.  
20 We're talking about last time when the Southern California  
21 recommendation never made it I had sent out a couple of  
22 emails asking for them and never received any.

23           But the next thing I want to talk about is what  
24 about the time? Ten to two? Should it be shorter? Should  
25 it be started at 9 and end at noon and just go three hours

1 and sort of not take the morning and the afternoon? Do you  
2 want more time for these meetings?

3 **MS. SAVAGE:** Okay. We have comment.

4 **UNKNOWN FEMALE:** I would say we need more time. It  
5 would be nice to start maybe an hour earlier and maybe like,  
6 you know, have a lunch time so we can kind of discuss what  
7 went on and then come back in the afternoon for another  
8 couple of hours. I mean not that I'm dying for more meetings  
9 but because there's only two of them, this is a really short  
10 amount of time.

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Anybody else have  
12 any follow up then?

13 **UNKNOWN FEMALE:** Most advisory committee meetings  
14 I'm aware of are over a two-day period and I understand  
15 people are coming from a distance and I understand that you  
16 guys are giving a lot of time, but I do think that gives that  
17 overnight period for all of the committee members to crazily  
18 email each other on an issue if necessary and though it might  
19 eliminate some excellent people here who I would hate to see  
20 go based on the time commitment and the location they come  
21 from, you know, if that was the established piece as members  
22 came in the future and they understood that would be the  
23 meeting length, you can imagine that lunches in a weird way  
24 always have in politics or any type of advisory commission,  
25 the lunch time and the overnight often are the most

1 productive times in the midst of that meeting. We shouldn't  
2 ignore that because that is a time when most things can  
3 happen.

4           **UNKNOWN FEMALE:** Yes, I have a question. You're  
5 talking about changing from four to three hours but from what  
6 I've seen at the Advisory council -- I'm usually on line  
7 watching you guys -- is that you use the whole four hours.  
8 So there's really no justification for reducing the amount of  
9 hours and, you know, the question would be do you need more  
10 or are we wasting time here?

11           **ADMINISTRATIVE LAW JUDGE CLARK:** Anybody else have  
12 any --

13           **MS. SAVAGE:** I'd like to see it started at 9:00.  
14 That way that there is some time for those of us, for all of  
15 us, parents who need to get home or people whatever your  
16 occupation is you've got some part of this day to then do  
17 whatever you need to, to get that 3:00 deadline of your  
18 continuance requests, I mean we've got this time to add some  
19 work in. So if it started earlier, like 9 to 1 if that was  
20 our goal, then the carryover to 2:00 isn't as bad when we --  
21 I agree we had meetings 10 to 2 and we're carrying over until  
22 3:00 and that starts to create some problems.

23           **MR. CORBIN:** I'm Carl Corbin and I actually like  
24 the 10:00 time for some of us who do drive significant  
25 distance to get to Sacramento. I think it's a good time to

1 start. It lets people wake up to the webcast, they're  
2 involved, and then if we need to go to 2 or 3 for additional  
3 time, I think that's good. But I actually like the 10:00  
4 time.

5 **MS. SAVAGE:** Do you guys have any feedback? You  
6 guys have worse traffic problems than we do.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, with that  
8 said do we want to structure in a half hour lunch break for  
9 10 to 12, then 12 to 12:30 a break and then going until 2 or  
10 2:30? I mean is that what people-- is that what I'm  
11 hearing? Mr. Wyner?

12 **MR. WYNER:** I'd like a lunch break. I mean I can  
13 eat lunch in a half hour. But I'm inclined to want to start  
14 earlier. I mean I don't mind it ending at 2:00 but I don't  
15 know that I could (inaudible). It's always like on to the  
16 next issue.

17 **UNKNOWN FEMALE:** Judge Clark, didn't we used to  
18 start this meeting earlier? And we ended up changing to a  
19 later start time because of the traffic issues? That's my  
20 recollection.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes. I think that  
22 might be the case, particularly for Southern California. I  
23 think originally it was just a public meeting and there was  
24 no Advisory Committee and I think it was 9:00 1:00 or 12 or  
25 12:30. I can't recall specifically but since the Advisory

1 Committee has been in effect it's been 10 to 2.

2           **MR. READ:** I actually think regardless of whether  
3 we take a lunch break four hours seems to me to be a  
4 reasonable amount of time. I think especially when you have  
5 groups of lawyers, they will tend to fill whatever time you  
6 give them so actually appreciate the fact that it's --  
7 there's a sense of being rushed every now and then. I think  
8 it's important for a good discussion. And as someone who  
9 doesn't live in Los Angeles or Sacramento, I like 10:00. It  
10 makes it much more reasonable.

11           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. That's  
12 good. The idea here is to change the locations but in  
13 Sacramento we tried to have a meeting in Oakland but the  
14 videoconference equipment doesn't work in every room in those  
15 government buildings so I may look at having -- assigning a  
16 space to have the meetings similar to what we've done here  
17 which is we're borrowing equipment from the Los Angeles  
18 office and moving to a conference room that accommodates it.

19           I wasn't able to find any in Oakland but I wanted  
20 to at least in Sacramento stagger between Sacramento and the  
21 Bay area. And here the idea is to go between Los Angeles and  
22 Orange County between our two offices there but that office  
23 in Laguna Hills is going to close and also they've had some  
24 issues with their videoconference equipment so we're not able  
25 to use it as well.

1           But it isn't just static and I don't want to just  
2 keep it at the same location even though it starts to work  
3 out best for everybody as you figure out where to park and  
4 how to access the building decently and we've been trying to  
5 find new places but it's important it has to have the ability  
6 to have the videoconferencing so we can have our joint  
7 meetings. Ms. Savage?

8           **MS. SAVAGE:** Well, I was going to say I know we  
9 talked at different times about what the benefits of the  
10 joint meetings versus having a Northern California meeting  
11 and a Southern California meeting, and maybe the staggering  
12 is once a year we do the web conferencing and it's at  
13 Sacramento and LA. And the other meeting, one is held in San  
14 Diego or Orange County and the other is held out in Oakland  
15 and it's not a joint meeting. And that might get people --  
16 you know, get access of that.

17           I have to drive very far in the morning like Mr.  
18 Corbin but it gets different parents who can participate and  
19 it would let the Committee at that point talk about more  
20 issues specific to Southern California or to Northern  
21 California. Because I can see with the Laguna Hills office  
22 closing you may get some very specific -- Southern California  
23 specific issues dealing with case management or time  
24 management or whatever type of management issues that the  
25 Committee might want to address which we would in theory not

1 kind of affect any of us up here.

2           So it's just something to throw out to have one  
3 joint meeting and then a separate meeting, second meeting per  
4 year just separate.

5           **ADMINISTRATIVE LAW JUDGE CLARK:** I think that's an  
6 interesting point and I don't know how everybody feels but  
7 OAH -- we have a statewide program. So the importance of the  
8 process has to work everywhere. So that's why the feedback  
9 between Northern and Southern California at these meetings is  
10 so important because we can't have a process in Northern  
11 California and a separate process in Southern California.

12           The office doesn't operate that way. We're a  
13 statewide office. So that's why it's important to have the  
14 feedback but I hadn't really thought about having one joint  
15 meeting and one non-joint meeting but it's something to think  
16 about for sure. Do I see another hand in Sacramento?

17           **MR. ROSENBAUM:** Yes. A couple points. I think the  
18 idea of changing locations for parent involvement, certainly  
19 that would increase that. And I would hope -- we understand  
20 the ALJs schedules but I think it would be useful to have as  
21 many of the ALJs present at the meetings as well because of  
22 this dialogue aspect of it. It's important to have direct  
23 dialogue.

24           Also Judge Clark, the staggering issue you raised  
25 before, I think staggering, however long the terms are, I

1 think perhaps 50 per cent of the Committee should remain or  
2 there should be some staggering process. Or maybe one third.  
3 Because just for continuity's sake if you have a totally new  
4 board every year it's just not going to be productive. So I  
5 would definitely encourage some kind of formalized staggering  
6 of the membership.

7 **MS. SAVAGE:** There's another comment from Southern  
8 California. Any later than 10 makes it tough for people to  
9 get there from the Inland Empire or points south and an  
10 earlier start time forces us into the early morning traffic.

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Any  
12 comments in Los Angeles area here? Anyone?

13 **MR. READ:** Just I think the traffic here in Orange  
14 County takes a lot to get up here.

15 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes.

16 **MR. HARBOTTLE:** The other advantage to having  
17 statewide meetings is not only that we get to talk amongst  
18 ourselves but I'm not sure how the webcast would work if  
19 there was a separate Southern California or Northern  
20 California meeting. And that seems to be important for  
21 getting input.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes. The webcast  
23 is important because it really has opened the access to  
24 people who really can't make it anywhere but they can still  
25 participate and listen and that's been a really helpful

1 process. I saw another hand in Sacramento.

2 **UNKNOWN FEMALE:** Again, bringing a new perspective  
3 perhaps, I see a second screen up here at least in  
4 Sacramento. And adding a Bay area perspective as a third  
5 environment like we have today may solve a lot of these  
6 issues very simply because we would have video conferencing  
7 which I believe is possible to add Oakland or San Francisco  
8 and then we have that ability for parents to participate and  
9 we wouldn't have the driving issue.

10 And even though we would have smaller groups that  
11 would be more room for people for participation of parents  
12 and such and hopefully it will increase as the Advisory  
13 Commission becomes even more effective.

14 And so my thought is adding locations via video  
15 conferencing especially when you have double screens right in  
16 front of me makes sense. If that would be effective. And in  
17 addition I love the idea of the two groups meeting at the  
18 same time because it is a State -- you're sending out a  
19 message with that to people who are watching and the message  
20 is that it is one state and that this Advisory Commission is  
21 one group and that they are working in concert with OAH.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you.  
23 The two screens, the dual screens, I would have to check with  
24 the IT people. I'm not sure if we can conference call people  
25 and we probably can but it starts to affect how big the

1 screens are that you can see people which may or may not be a  
2 concern but it's definitely something worth looking into  
3 seeing about bringing that to a different part of the state.

4 **MR. KILLIAN:** It's -- Richard, Philip Killian at  
5 DGS, yes, it's limited by the Polycom system and what you  
6 basically have paid for. So that's something you'll have to  
7 talk about your technicians with.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Gotcha. It all  
9 comes down to the money and the budget I guess at this point.  
10 Any other thoughts or comments or concerns? Anybody have any  
11 feedback at all about this process that you want to talk  
12 about now before we open it up to public comment?

13 **UNKNOWN FEMALE:** I just have one question which is  
14 actually that I don't know what the terms are currently.

15 **ADMINISTRATIVE LAW JUDGE CLARK:** Basically what  
16 ended up happening last time was it was a 2-year term. Half  
17 the group was off and the other half basically stayed on so  
18 my expectation would be the same.

19 We're asking everybody to reapply and to resubmit  
20 your application but I would anticipate that if you were on  
21 the Committee last year, your two years are basically up and  
22 then whoever joined this year would have one more year.

23 That's generally how it worked. It didn't work  
24 entirely that clean last year but that's generally the  
25 process we're working towards.

1           **UNKNOWN FEMALE:** Can I ask one question about that?  
2 So if we reapplied we say that we've been on it for one year  
3 then or will you already know that?

4           **ADMINISTRATIVE LAW JUDGE CLARK:** I don't know your  
5 name but it sounds like you put that on your application that  
6 you've served on the Committee or when you joined the  
7 Committee that would be helpful, sure. More information is  
8 always better. Anybody? Anything else? I don't want to cut  
9 off any conversations so we're about to open up to public  
10 comment.

11           We're actually running ahead of schedule now. I  
12 just want to point that out. It's sort of a rarity but --

13           **MS. SAVAGE:** I have a lot of public comment.

14           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, why don't  
15 you go ahead and start?

16           **MS. SAVAGE:** And then if other people have things  
17 to jump in.

18           This comment is about our agenda item 3g and the  
19 general discussion regarding continuances, but it came in  
20 later.

21           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

22           **MS. SAVAGE:** And the question was, does the  
23 requirement for every party to agree with the continuance  
24 include subpoenaed parties?

25           And I think we were -- I think the question is that

1 if you subpoenaed a witness does that witness also have to  
2 agree to a continuance -- if a continuance has got to be  
3 requested after they've been subpoenaed.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** It's generally  
5 public comment -- typically calling the parties to the case  
6 are the ones who would submit motions to continue and need to  
7 agree or submit oppositions.

8 **MS. SAVAGE:** Okay.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** But if one of us  
10 has a reason to say something then they should certainly put  
11 it in writing and weigh in and let the judge decide.

12 **MS. SAVAGE:** Anyone else? Okay.

13 "Dear Committee, what is your Committee doing to  
14 make the system fairer for families? The system as it is set  
15 up is patently unfair and stacked against parents and  
16 children. As long as there is unequal access to counsel,  
17 unequal access to experts, unequal access to witnesses,  
18 unequal access to even observing our children in their  
19 Special Education programs, the system is unjust. Teachers,  
20 even if they agree with parents about what is most  
21 appropriate for the education of their children, rarely side  
22 with the child or parents for fear of retaliation and  
23 reassignment. They are not going to testify against people  
24 who write their paychecks. How can parents be expected to  
25 compete against the system that is designed to be able to use

1 endless amounts of taxpayer's money to fight us? We have to  
2 spend our own money. Districts can spend as much as they  
3 want to and because it is not their money they don't care.  
4 They don't care if they're spending \$50,000 of taxpayer money  
5 to deny \$15,000 worth of services to a child. It is an  
6 obscene, unfair system. People accused of murder are  
7 guaranteed the right to counsel yet parents of children with  
8 disabilities who are seeking compliance with State and  
9 Federal disability laws are not."

10 I think we've had this type of issue come up from  
11 parent comments and I think it's just a reflection of the  
12 frustration that many parents experience. And I don't know  
13 that there is a clear answer. But I think it's -- I think  
14 it's a great frustration. Comments?

15 **UNKNOWN FEMALE:** On that note, too, speaking of the  
16 inequities, I mean, you know, when you look at these  
17 decisions and it just looks like no one seems to be following  
18 the spirit of IDEA 2004 that once that -- where it says that  
19 they want the idea of Special Education is to ensure maximum  
20 self-sufficiency. When you see that it's okay if the kid  
21 only, you know, progresses a whole quarter in two years.

22 So one of the things I guess parents would like to  
23 know, where these judges are getting these ideas that that  
24 maximum self-sufficiency isn't important. So I was thinking  
25 maybe -- we're curious about how the judges were trained and

1 what we'd like to see is the training materials put online so  
2 we can kind of see what the process is and what they're --  
3 how they're coming up with these ideas and these judgments.

4           **UNKNOWN FEMALE:** I would speak actually in -- both  
5 for the parent who said in the letter and as a person who has  
6 been frustrated as well and yet trying to make a positive  
7 impact on change as well as what Robin has just said. What  
8 we saw and what we've done in our review, looking at the  
9 cases that are most recent is that since SEHO there seems to  
10 be a paradigm being applied with the decisions. If you  
11 people review decisions. I assume you have.

12           You'll see that what they do is try to find a FAPE  
13 offer and then once they've found one and generally there has  
14 been one on a SELPA form, then they try to decide with the  
15 case based on those four corners of that offer or that  
16 document and that is a paradigm that didn't exist in SEHO  
17 times. And I imagine there's some legislation perhaps or  
18 something that will justify the use of that decisional  
19 process.

20           But the process has come down to what I consider,  
21 and I think the families consider, to be a paradigm of, you  
22 know, it's like deal or no deal. FAPE or no FAPE. And yet  
23 there are issues beyond FAPE in terms of in the past where we  
24 considered the child, we considered the history of what has  
25 happened to the child prior to the case. And then we

1 considered also what the potential of the future was.  
2 Whereas right now we're looking at the FAPE offer for  
3 quarters and making a decision.

4           And as a parent I'd like to ask the Advisory  
5 Commission if they can to explain at some point in a future  
6 meeting or now where that paradigm came from in terms of the  
7 cases that we're leading. Where is the paradigm? Where did  
8 we start to look at cases as FAPE or no FAPE? And I extend  
9 on Robin's briefly to say where the training came from that  
10 lead us there if there's not legislation that put us there.

11           **ADMINISTRATIVE LAW JUDGE CLARK:** I appreciate your  
12 input. I just don't want to make a general comment about a  
13 public comment. This is the opportunity for anybody who has  
14 some input into the process for things that are not otherwise  
15 on our agenda to have your input.

16           It's not really -- it doesn't invite, necessarily  
17 invite discussion or invite input from OAH, so it's just your  
18 opportunity to express whatever it is that you want OAH to  
19 know about the process. So I appreciate your input but, and  
20 I don't necessarily agree or disagree, I'm just saying we're  
21 not going to necessarily debate those kinds of issues.

22           But if it is something that you want to discuss at  
23 a future meeting, you can certainly bring those topics  
24 forward and if they're appropriate for the mission of this  
25 particular Committee, we'll add them to the agenda.

1 Ms. Savage, do you have any other public comments?

2 **MS. SAVAGE:** I do. But I wanted to find out if LA  
3 had any public comments because I have a stack.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** I think at this  
5 point why don't you just go ahead and if we have anybody that  
6 has any input we'll take it when they're ready to raise their  
7 hand and tell us.

8 **MS. SAVAGE:** Okay. Here's another one.

9 "In reading OAH ALJs decision it seems they are  
10 unclear about a child grades being fully included with  
11 children who are not disabled and quite often they will leave  
12 school districts when they argue that the children are "not  
13 ready for inclusion." Inclusion is supposed to be the  
14 default placement and children are not supposed to be limited  
15 from general education unless it is proved that they can't be  
16 educated in the general education environment. If districts  
17 have never tried to include these children with supports and  
18 accommodations they need how can they rule that segregating  
19 them in a Special Ed only class is the least restrictive  
20 environment. What would your Advisory Committee do to help  
21 ensure that children with disabilities will stop being  
22 automatically segregated? This is a (inaudible) issue."

23 **MR. WYNER:** What's our rule?

24 **ADMINISTRATIVE LAW JUDGE CLARK:** It doesn't  
25 necessarily invite comment. If you have something you want

1 to input because it brought up an issue for you, but I'm not  
2 going to necessarily debate her points and the mission of the  
3 Advisory Committee is pretty clear.

4 The mission is it's a committee composed of  
5 parents, attorneys, advocates, school employees and other  
6 stakeholders, the majority of whom are parents and advocates  
7 or attorneys for parents. The Committee provides non-binding  
8 recommendations to OAH to improve the mediation and due  
9 process procedures utilized by OAH.

10 It's a fairly straight forward mission statement  
11 and some of the comments necessarily encompass greater issues  
12 that we really don't have authority to take care of. Some of  
13 them are legislative issues and they should be talking to  
14 their legislators.

15 So if there's any -- if you have a comment, Mr.  
16 Wyner, go ahead.

17 **MR. WYNER:** Well, the system is flawed as all  
18 systems are flawed. And I can certainly, being a parent of a  
19 child with a disability, yes, I certainly understand the  
20 frustration that everybody feels.

21 But reading the words and the purposes of the  
22 statute and how that actually plays out in real life are  
23 sometimes two different things. It is a little bit unfair  
24 that school districts can spend thousands of dollars to pay  
25 their lawyers to fight a parent who is not represented. But,

1 you know, parents think that they can do (inaudible) and  
2 frankly I think these statutes and regulations are incredibly  
3 complex. Parents' ability to, you know, maneuver through  
4 these mine fields and their case -- I mean representatives  
5 without any counsel to advise you go up against a lawyer and  
6 you can't afford to hire an expert and the hearing office  
7 views all the teachers and psychologists, licensed school  
8 psychologists as experts and not percipient witnesses, you've  
9 got to really, really talk frank here. And you start from a  
10 very difficult position.

11           So, you know, I agree with Judge Clark. These  
12 issues are -- have to be addressed legislatively. You know,  
13 it's -- I know there's a lot of people here that feel that  
14 parents did better when SEHO was in charge of this and some  
15 people feel that, you know, you've got a government  
16 organization monitoring another government organization and  
17 that's not fair. But that goes on all the time.

18           It's not in Special Ed that that happened. So, you  
19 know, I don't think that anybody who sits as an ALJ has it in  
20 for the kid. But a lot of people I think wonder, well,  
21 exactly how many decisions could the kids win? Well, the  
22 state would be bankrupt. Well, the state is bankrupt. Well,  
23 how many decisions can they win now?

24           And so, you know, I've had decisions which I  
25 thought, you know, the decision was, you know, somebody

1 decided this is the way I'm going to rule and decided to  
2 (inaudible) the things that were said during the hearing that  
3 proves that, you know, one side should win and the other side  
4 should lose.

5 A lot of these things appear to be result-oriented.  
6 But it's not going to change. It's not going to change in  
7 this economic climate except legislatively. It's not a fair  
8 game. And I represent parents. I mean I don't think it's  
9 fair to them.

10 **MR. CORBIN:** Judge Clark, this is Carl Corbin. I  
11 would just like to briefly comment. These issues came up a  
12 couple of times and I just wanted to share again that people  
13 just looking at the decisions, because of the fee-shifting  
14 mechanism under the IDEA, if a district goes to a due process  
15 hearing, if the district loses on one or more of the issues  
16 and the parent is represented, which often we go to hearings  
17 and they are, then the districts can be responsible for some  
18 or all of the costs of the parents' attorney.

19 The district has a great incentive to make sure  
20 that this case that they're going to hearing on is a case in  
21 which they think they will prevail upon. Therefore we would  
22 expect and should expect that most decisions will be in favor  
23 of the district because the district has made this cost  
24 benefit analysis. So again I think that issue needs to be on  
25 the table.

1           **MR. WYNER:** So what you're saying, Carl, you only  
2 go to hearing in cases that you win.

3           **MR. CORBIN:** No. They only go to hearing in cases  
4 in which we think we're going to prevail on. Otherwise why  
5 would we go to a hearing and throw away 500 --

6                   (Overlapping voices.)

7           **MR. WYNER:** But Carl, the same is true for a  
8 lawyer. I mean -- ordinary people cannot afford to pay for  
9 legal representation. Parents, you know, no matter how much  
10 money you have you're going to run out of money at some point  
11 and it's on us as parent lawyers to say, okay, you're out of  
12 money, your case is great, I'm going to keep going because I  
13 know I'm going to win and recover.

14           **ADMINISTRATIVE LAW JUDGE CLARK:** I appreciate that.  
15 I want to just focus us back in on what we're here today to  
16 do, which is the Advisory Committee, the mission statement I  
17 just read to you and general public comment about anything  
18 that the public wants us to know at this point.

19                   I don't want to have the Advisory Committee  
20 debating points that we have no control over here at this  
21 point. So Ms. Savage, if you have another comment that we  
22 need to read please do so.

23           **MS. SAVAGE:** I do. I've got a stack. Another  
24 question, what consequences can OAH use as they determine a  
25 district breaks a law? I think that's a (inaudible). And I

1 think that's what the hearings are about.

2           Okay. The next one is -- it's kind of a long one.

3           "For the past two years every request we have made  
4 of our local regional center for services for our son  
5 (inaudible) from August 2007 have been denied and went to a  
6 fair hearing. We no longer have sufficient means to hire an  
7 attorney and so we have no choice but to represent ourselves.  
8 In our last hearing it was clear that both the ALJ and  
9 counsel for the regional center have a bias against our self-  
10 representation. At one point the judge sneered "neither of  
11 you is an attorney, are you?" Nonetheless we have been  
12 gaining favorable rulings. However to date the Regional  
13 Center has failed to reimburse us for services that resulted  
14 from judgments. We have now participated in four fair  
15 hearings and have two more requests in process. Each of  
16 these hearings has cost us and the Regional Center an average  
17 of two days in hearings and weeks of preparation. The  
18 retainer from a private attorney for our fair hearing case is  
19 between 20 and 40 thousand dollars. At an average of \$30,000  
20 we could have made very good use of \$120,000 worth of  
21 services to address our son's needs. So far the Regional  
22 Center has deemed it a better expenditure of funds to fight  
23 our case than to address the needs of our son. As it stands,  
24 the services have gone woefully underfunded and his  
25 advancement has been accordingly hampered since we are made

1 to both pay for services and the cost of preparing for a fair  
2 hearing. Since his advancement has been so drastically  
3 delayed he will require substantially more therapy to address  
4 the ever-growing needs resulting in an even greater cost to  
5 the State. It is the extremely short-sighted vision of the  
6 Regional Center that seems to be the greatest barrier. We  
7 would have greatly benefited from a system of self-  
8 administered services. As the parent we have the greatest  
9 understanding of the needs of our son and we are the sole  
10 managers of his program. It would be far more beneficial to  
11 our son's advancement and a far less strain on the State if  
12 we had direct access to a budget. We would be happy to stand  
13 for a competency review for this access. What is the  
14 likelihood of developing a self-administered system? And all  
15 of this is about the Regional Center. I think it's not a far  
16 cry to say that parents in terms of the educational system  
17 might have a similar comments. So thank you."

18 Next one. Sure.

19 **MS. BROCK:** Just a quick comment. In that note  
20 they made a comment about enforcing hearing results and maybe  
21 that's a topic for further discussion, you know, at a later  
22 meeting on, you know, what is OAH versus CDE's responsibility  
23 for enforcing the results of the hearing.

24 **MS. SAVAGE:** Do you have another comment?

25 **UNKNOWN FEMALE:** No, go ahead.

1           **MS. NEWTON:** Hi, my name is Laurie. I'm a parent  
2 but I'm also a Commissioner on the Advisory Board of Special  
3 Ed.

4           **MS. SAVAGE:** Can you hear down there?

5           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, I just  
6 couldn't see, I just had to stand up for a second and see who  
7 was speaking.

8           **MS. NEWTON:** I'm Laurie and I'm a parent on the  
9 Advisory Board. I'm a parent and also a Commissioner. But  
10 today I'm here as a parent. And we're hearing all these  
11 comments, I want to encourage parents and also judges and  
12 attorneys to participate and come to our Advisory Commission  
13 meetings.

14           Our next one is in May. You can attend it on our  
15 website, that this is what we also hear so if we collaborate  
16 we can make a better system. There are lots of gaps in our  
17 systems. It's definitely an eye opener for both Kristin  
18 (phonetic) and I today. Kristin had to leave but she was  
19 here for a short time, the Chair on the Commission and  
20 definitely hearing (inaudible) at this time. There's so many  
21 parents out there that are unaware of this meeting and also  
22 they are not aware of our Special Ed Advisory Committee so I  
23 encourage you to get the word out to those parents that  
24 (inaudible).

25           **ADMINISTRATIVE LAW JUDGE CLARK:** I appreciate you

1 saying that. You said on your website, can you tell us what  
2 that is and maybe people on the webcast and people in the  
3 audience might want to access what you referred to. Are you  
4 talking about the CDE website?

5 **MS. NEWTON:** It's under Special Ed, Advisory  
6 Commission on Special Ed.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** So on the  
8 California Department of Education website, that's where  
9 they'll get the information about your meeting?

10 **MS. NEWTON:** Yes.

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. And there  
12 is a link on the OAH website that you can follow the link to  
13 the CDE website. If you go to our website it's possible.  
14 Thank you very much and thank you for being here today.

15 **MS. SAVAGE:** Do you have a comment?

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Do I see a hand?

17 **MS. SAVAGE:** Okay, go ahead.

18 **UNKNOWN FEMALE:** I have a prehearing conference  
19 statement, I guess, issue that I kind of wanted to bring  
20 forward during public comment which is lately a lot of cases  
21 are getting very close to settled the day the prehearing  
22 conference statement is due or the day before the prehearing  
23 conference statement is due.

24 So it usually puts us in a difficult position so  
25 often there's an agreement between opposing counsel and

1 myself that we would like to put off the prehearing  
2 conference statement due date for a day or two because we  
3 really think we've got a settlement going and we think we're  
4 going to have signed documents in a day.

5 I'm really unclear as to whether or not that  
6 requires a motion or whether or not that requires an  
7 agreement of the parties and who the heck we talk to because  
8 it's been handled several different ways, always  
9 satisfactorily. But I'm never quite sure I'm doing the right  
10 thing so I just kind of want to talk about what to do when  
11 that happens because that due date seems to be one of the  
12 precipitating settlement stakes.

13 **MR. WYNER:** Start a bit earlier.

14 **UNKNOWN FEMALE:** I wish. I will tell you that I  
15 wish that will happen but almost always being the parent  
16 attorney the offer is coming from the district very last  
17 minute.

18 **ADMINISTRATIVE LAW JUDGE CLARK:** Typically just a  
19 letter that says you both have agreed to postpone your  
20 prehearing conference statements is fine.

21 **UNKNOWN FEMALE:** Okay.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Typically it  
23 shouldn't be postponed until -- you know, if the prehearing  
24 conference is at 10:00 we prefer the day before so we  
25 shouldn't say we're going to give it to you by the time it

1 starts because the judge needs to read them and process the  
2 information as well. So a letter typically just saying that  
3 is enough to postpone that deadline and at least we know  
4 what's going on and we don't have to have our staff call you  
5 and say why haven't you sent in your statements yet. So  
6 thank you for bringing that up.

7 **MS. DOME:** Can I ask a question? This is Dora Dome  
8 and I have a question on that issue as well which is it seems  
9 like the scheduling orders have changed. They used to  
10 indicate that the prehearing conference statements were due  
11 three days before the prehearing conference. And now they  
12 are indicating that the opposing party has three days to  
13 respond to any motions that are filed prior and so is there  
14 no longer a deadline to file the prehearing conference  
15 motions?

16 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not aware of  
17 any change to our standard scheduling orders so I will look  
18 into that. You're talking about the one you get when the  
19 case is filed? That order?

20 **MS. DOME:** Right. It used to say that all --  
21 right. It used to say that all prehearing conference motions  
22 must be filed at least three days before the prehearing  
23 conference. And it's the language which has changed now  
24 stating that any oppositions to motions filed must be  
25 submitted within three days of -- you have to file your

1 opposition within three days of receiving the motion. So  
2 there doesn't seem to be any stated deadline for prehearing  
3 conference motions in the scheduling order.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not aware that  
5 there's been a change but I will look at that and look at the  
6 order and see if there's a way to clarify it and make it  
7 tighter.

8 **MS. DOME:** Okay, thank you.

9 **MS. SAVAGE:** Okay, I have --

10 **ADMINISTRATIVE LAW JUDGE CLARK:** I have one more  
11 thing I just want to say.

12 Ms. Brock had indicated at the last Advisory  
13 meeting that she would find a copy of a prehearing conference  
14 order that she thought was really helpful to unrepresented  
15 parties and she did provide that information to me yesterday  
16 and I was actually able to look at that prehearing conference  
17 order that she had recommended and we have incorporated  
18 already that -- those paragraphs that were sort of user-  
19 friendly and provided information about the hearing.

20 Those are now on our regular template. They are  
21 already in there but I just wanted to let Ms. Brock know I  
22 appreciate your sending that information and I have followed  
23 up on making sure that those helpful paragraphs about how  
24 parties should treat each other and that type of information  
25 is in our standard template that the judges do after a

1 prehearing conference.

2 **MS. BROCK:** Thank you.

3 **MS. SAVAGE:** Okay.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Harbottle has  
5 a question down here and then we're back to you.

6 **MR. HARBOTTLE:** I just had a recommendation for the  
7 parent attorney about stipulating to move the prehearing  
8 conference statement. My experience is the best way to do it  
9 to make sure you get the Court's attention is to put it in a  
10 pleading and in the title block just state really clearly  
11 what it is. Sometimes letters aren't treated as pleadings or  
12 stipulations and they don't process quite as quickly.

13 **UNKNOWN FEMALE:** I almost always make a call and  
14 then follow it up with the writing. I'm just never sure  
15 whether it -- I'm glad Judge Clark clarified it. I'm just  
16 never sure if it should be a motion or not but that's  
17 helpful.

18 **MS. SAVAGE:** Yes?

19 **UNKNOWN FEMALE:** One other thing that we had to  
20 deal with was postponing with request to postpone our hearing  
21 was because the district wanted to hold an IEP. Well, they  
22 had been postponing hearings since December so if we continue  
23 to wait and wait and wait and a postponement was allowed we  
24 would have the entire school year gone. It's already going  
25 to be gone.

1           **MS. SAVAGE:** Another comment from the web and  
2 there's an example. The question is, why doesn't OAH have a  
3 legal hotline that can provide legal advice on procedural  
4 issues before a case is filed? And the example that's given  
5 is the California Association of Realtors provides its  
6 members a legal hotline to help avoid going to court and to  
7 get advice on the laws affecting them. OAH nor any other  
8 organization that I have found will give any legal advice for  
9 parents unless the exact issue has been posted as an FAQ and  
10 the parent can find them. And given, which I can see and  
11 really no one else, is the link to the legal hotline access  
12 for the California Association of Realtors.

13           So I guess the question is -- I guess the issue  
14 would be is there are more than just the parent handbook and  
15 FAQs, could OAH actually staff something like a hotline that  
16 might help unrepresented parents answer some questions.

17           **UNKNOWN FEMALE:** They might have provided it in the  
18 past. The things we looked at, we were assigned a person to  
19 assist us at one time. But I don't believe that's any longer  
20 available but Elaine Palley (phonetic) was assigned at one  
21 point and then did assist us slightly when we did not have an  
22 attorney or we used -- you know, you can use an (inaudible)  
23 free advocate. But there seems to be some -- it's not  
24 perfect by any means but there used to be an OAH type  
25 assignment that you could have as a parent. It might be

1 interesting to re-look at that because I don't believe it's  
2 any more available.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** I don't think --  
4 no, that's not available. We have what we call mediator  
5 assistance available to help parents draft complaints or  
6 draft a new claim after an NOI. We do not have anybody on  
7 our staff or any pro tem judges who are available to help  
8 parties prepare for hearing or do their evidence packets.  
9 That's not -- we don't have that service.

10 If you need help drafting a complaint or refining  
11 your issues after a Notice of Insufficiency is granted, we've  
12 got somebody who could help you there.

13 **UNKNOWN MALE:** Isn't there a list of free or low  
14 cost attorneys on the website?

15 **ADMINISTRATIVE LAW JUDGE CLARK:** We do have a list.  
16 (Overlapping voices.)

17 **ADMINISTRATIVE LAW JUDGE CLARK:** And our staff will  
18 send it to you if necessary. Ms. Savage?

19 **MS. SAVAGE:** Do we have a public comment?

20 **UNKNOWN FEMALE:** I do.

21 **MS. SAVAGE:** Okay, web to more public.

22 **UNKNOWN FEMALE:** Okay, in regard to that list, I  
23 utilized it quite extensively and it did not render any free  
24 or even reduced cost representation. And full price  
25 attorneys were on that list and it seemed to be very nice

1 advertisement for them. But it did not end up in any lesser  
2 cost or no cost representation.

3 **UNKNOWN FEMALE:** I agree with that.

4 **UNKNOWN FEMALE:** I agree with that as well.

5 **UNKNOWN FEMALE:** I agree with it.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Savage?

7 **MS. SAVAGE:** There is just one more quick comment  
8 and then I'm --

9 **UNKNOWN FEMALE:** I actually called every attorney  
10 in the book, plus opened up the phone book and called every  
11 single Special Education attorney out there, everybody that I  
12 could even possibly call. I even read the front page of the  
13 newspaper and all sorts of different things and I ended up  
14 getting pro bono representation but not through any of your  
15 lists or any handbooks available.

16 **MS. SAVAGE:** Okay, our next --

17 **ADMINISTRATIVE LAW JUDGE CLARK:** I just want to  
18 make one comment to the public. The list of pro bono and  
19 less expensive attorneys is available on our website but  
20 attorneys certify -- self-certify that they provide those  
21 services and that's how they make it on that list.

22 So we don't (inaudible) that list and we have no  
23 control over what the attorneys' fees are. That's why we  
24 have a statement on the list that says you need to contact  
25 the attorney themselves and determine whether or not they are

1 free or low cost.

2 **MS. SAVAGE:** Okay.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyman has a  
4 comment.

5 **MS. SAVAGE:** Oh, okay.

6 **MR. WYNER:** I'm on the list and as I understand  
7 this and how to conduct my law practice I have to pay fixed  
8 expenses every month. I don't have -- it's not an automobile  
9 accident that at the end of every month I've got fifty cases  
10 that I can settle and the cash flow is coming in.

11 So we're on the list and we do our intakes, you  
12 know, we don't charge anything for our intake but unless your  
13 case looks like -- first you have to demonstrate that you  
14 really can't afford to do it. I mean a lot of people that  
15 own their own houses and think that, you know, I own a house  
16 and I've got my equity and I'm not dipping into my equity for  
17 you to represent my kid. I don't agree with that.

18 But if you can demonstrate that you don't have  
19 money and you have a really, really good case -- because  
20 these cases are really, really hard to win, you know,  
21 unfortunately I've seen those decisions on really hard to win  
22 cases. Look at the Porter case, any number of cases out  
23 there. They have to comply with the SEHO decision and I'm  
24 surprised that you can find somebody to do that pro bono.

25 But at least you have a case that looks like it's a

1 slam dunk, you know, the attorneys that represent parents --  
2 how does the public expect us to represent you if, you know,  
3 if it's going to get continued, it's going to take a year to  
4 resolve your case, then they go and appeal the Federal  
5 District Court then they go and appeal to the Ninth Circuit  
6 Court of Appeals. You're talking about something that is big  
7 time litigation that could easily cost a quarter of a million  
8 dollars.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** Again I want -- I  
10 appreciate the comment. I want to focus us back on the  
11 reason that we're here and the mission of the Advisory  
12 Committee which is to help OAH improve its mediation and due  
13 process hearing process, not a debate about things that we  
14 don't have any control over here.

15 If there's some other comment, Ms. Savage, go ahead  
16 please?

17 **MS. SAVAGE:** I have just a follow up, one person,  
18 my experience with the list was the same that some were  
19 reduced to \$500 per hour. If you commit a crime you get a  
20 public defender for free.

21 I'm going to go to a different topic. Back to the  
22 legal hotline topic. The CDE funds programs such TASK to  
23 help parents prepare for an IEP, so they give a different  
24 example of what -- that Realtors Association.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** Excuse me, Ms.

1 Savage, continue with the public comments and if you have any  
2 other feedback we'll get to that in just a moment. Thank  
3 you.

4 **MS. SAVAGE:** Okay.

5 "Why are the timelines one third shorter when the  
6 district files against the student? The parent is at a  
7 disadvantage when the district's attorney files a case and  
8 the parent has to pay a lawyer to prepare a defense almost  
9 immediately. It seems clear to me that the due process  
10 process which I understood was put in place to allow the  
11 student to bring issues the student could not resolve with  
12 the district, has become a tool the districts can use to take  
13 advantage of students who cannot afford to pay an attorney to  
14 represent them. The cost to retain an attorney to attend a  
15 mediation is \$5,000, the cost to attend a due process hearing  
16 is from 35 up. \$35,000 and \$50,000. This is not a solution  
17 to allow students a venue to bring issues they can't resolve  
18 with the school district. Is this why OAH was created?"

19 **ADMINISTRATIVE LAW JUDGE CLARK:** I understood the  
20 comment, really quick, the reason the time lines are  
21 different is by statute and our user guide explains the  
22 difference in time lines. The rest of it I appreciate your  
23 comment. Thank you.

24 **MS. SAVAGE:** Okay. Another comment.

25 "In a recent fair hearing at the first day of

1 hearing during the introduction of evidence the regional  
2 center counsel made a motion to deny the testimony of one of  
3 our service providers. We were made on the spot to divulge  
4 what the service provider was to testify to. Regional Center  
5 counsel agreed to stipulate to the points that the service  
6 provider was planning to testify to and the ALJ denied the  
7 testimony of the provider. Clearly we cannot predict exactly  
8 what the service provider would say in testimony. And that  
9 is the point of testimony. It seems unreasonable for the ALJ  
10 to uphold the motion and deny our service provider the  
11 ability to testify by allowing the Regional Center to  
12 stipulate to our question."

13 **ADMINISTRATIVE LAW JUDGE CLARK:** It's really just  
14 public comment it's not really something that we need to  
15 debate. If you have an input once we hear all the public  
16 comment we'll take those and further discuss.

17 Go ahead, Ms. Savage.

18 **MS. SAVAGE:** "Legislation to allow the recovery of  
19 legal fees for fair hearing proceedings is sorely needed and  
20 would go a long way to helping level increasingly unlevel  
21 legal field."

22 And I think that's in respect to the Lanterman Act  
23 as opposed to the IDEA.

24 "After one or two fair hearings it is no longer  
25 possible to afford an attorney. The State's ability to act

1 as a very large pool of capital in defense places a self-  
2 represented parent at a substantial disadvantage. The  
3 practice of the Regional Centers of forwarding every decision  
4 to fair hearing is absolutely unreasonable and does not  
5 fulfill their legislative requirement to find cost effective  
6 solutions."

7 Okay.

8 "The OAH training schedule over the past couple of  
9 years shows that OAH legal training has been done by Perry  
10 Zirkel, a competent but extremely pro-district presenter and  
11 Alar Key (phonetic), a publisher that exists to advise school  
12 districts against parents. But there is little or no  
13 equivalent training from competent school side help. Such  
14 experts do exist. Steve Wyner is perfectly competent as his  
15 record shows and so is the legal team that prevailed in  
16 Forest Grove. Why doesn't OAH want to hear from such people  
17 as much as from Perry Zirkle or Alar Key? It's a vicious  
18 circle. OAH has taught the school side world view through  
19 biased training and the biased training teaches the school  
20 side world view that makes OAH dismissive of the kid side  
21 view that they haven't been hearing and have been prejudiced  
22 into seeing never before."

23 I'll just get the last one and then if people want  
24 to come back to different topics.

25 The final comment from the web is, is the Special

1 Education Advisory Committee regulated under the Brown Act?  
2 If so where are the bylaws? If not they may cope with your  
3 organization's issues.

4 Judge Clark, do you know the answer to that?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** I don't know the  
6 answer to that. We're not regulated under the Brown Act.  
7 We're an advisory committee set up by and part of our  
8 contract with the California Department of Education. But  
9 whether or not it applies to us I don't believe so but I'll  
10 look into that.

11 **MS. SAVAGE:** Okay.

12 **MR. ROSENBAUM:** We should look into that.

13 **MS. SAVAGE:** We should look into that.

14 **MR. ROSENBAUM:** I think we should have an opinion  
15 on it.

16 **MS. SAVAGE:** Okay, so then we have further.

17 "The idea for the judges' training material online  
18 is a great one. I as a parent would appreciate that. What I  
19 have seen in cases at the OAH level virtually all parents are  
20 losing and I often wonder why that is as I get the cases  
21 emailed to me daily or weekly. School districts that quash  
22 SELPAs are pursuing wasting money on litigation rather than  
23 educating student services because they know the huge  
24 disparity of cases they've won against the parents. I go to  
25 all superintendent council meetings at the W. E. SELPA and

1 see the cases that come by for approval. For example, they  
2 paid a \$1,000 for the service after not giving that service  
3 to the child and the \$15,000 to the parents' attorney and the  
4 \$15,000 or more to their own attorney. So what should have  
5 cost the taxpayer \$1,000 cost them \$31,000 or more for that  
6 original service. It is a travesty. Something needs to  
7 change. Southern California location W. E. SELPA in Rancho  
8 Cucamonga, they have web-based meetings all the time there.  
9 Love having webcasts and love being able to submit comment on  
10 line."

11 Do we have any other public --

12 **UNKNOWN FEMALE:** I do. Now my comment is about the  
13 Brown Act, that the Brown Act doesn't apply to certain types  
14 of special panels but for all open public meetings that is  
15 what it is. Ask the attorney general for an opinion on  
16 whether or not this advisory meets the Brown Act criteria.  
17 And I believe it does. It's gotten opinions on the smallest  
18 advisory panels and community advisory panels all have to go  
19 by the same open meeting rules.

20 **MR. ROSENBAUM:** Yes, I think it's worth getting an  
21 opinion on that and for some of the comments offered before  
22 about having conversation or exchanges between meetings and  
23 sessions would be precluded in fact by that. So I think  
24 (inaudible) besides nominating Steve Wyner to staff the legal  
25 hotline with Carl Corbin, they both ought to go to hearing

1 when they're going to win.

2 But Judge Clark, seriously, the prehearing  
3 conference order, the parent-friendly one that Tammy brought,  
4 could you circulate that to the Advisory Committee?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** I can circulate  
6 it. It is the standard order, the paragraphs are standard,  
7 the judges decide whether they're going to include it or not.  
8 The standard order that you should be getting in all of your  
9 prehearing conferences but I will send it to the Advisory  
10 Committee (inaudible).

11 **MS. SAVAGE:** I have a public comment that's come to  
12 me -- it's not an Advisory, not on the agenda, and there's  
13 been question about OAH's apparent position in reading their  
14 decisions that they don't order perspective relief and  
15 that -- has that changed or is it the same since when SEHO  
16 was and if -- is that OAH's current standard that if there is  
17 a case where the student proves the denial of FAPE that then  
18 perspective relief is not ordered but compensatory relief can  
19 be ordered? So I don't --

20 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not sure what  
21 the question is and I'm not prepared to comment so thank you  
22 for the input or bringing that to the attention.

23 **MS. SAVAGE:** I think I'm going to make sure that  
24 gets on the agenda for next meeting, whether I'm on the  
25 Committee or not. So the issue is, does OAH have a policy in

1 their analysis of the cases that go to hearing or in their  
2 analysis of cases that go to hearing that preclude an order  
3 of perspective placement and do they if there is a policy in  
4 place that only compensatory services are being issued when a  
5 student prevails on a denial of FAPE. So I'll write it up  
6 and submit it to you.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** No, that's okay, I  
8 can answer. We do not have a policy about perspective  
9 relief. So there's no written policy or understood policy  
10 about that. So thank you.

11 Any further public comment in Sacramento?

12 **MS. BROCK:** Yes. We had a discussion about  
13 training in the past and we had talked about ALJs coming to  
14 IEP meetings. And I don't know if that was ever resolved or  
15 not resolved. Just so they can see how the process goes.

16 But after reading a recent case, you know, I  
17 thought that the ALJ, you know, ran his courtroom great, you  
18 know, but the decision indicated that the ALJ probably never  
19 stepped foot into a Special Education classroom and I think  
20 that's really important that they're making a lot of  
21 decisions without really seeing what a classroom situation  
22 is, what an IEP meeting, how it's run, et cetera.

23 So I just want to throw that out in regards to  
24 training, that it's not just sitting in a classroom listening  
25 to someone speaking. It's actually, you know, going out and

1 meeting the kids and seeing how the process works.

2 **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you for  
3 that. Those are good ideas. I see another hand.

4 **MS. NEWTON:** Hi, this is Laurie Newton. Back to  
5 the real estate numbers, that they have a hotline number.  
6 There is a parent one, a one-eight hundred parent number, 1-  
7 800-926-0648. That's for the Department of Ed Special Ed.  
8 And so you can call that number if you have compliance issues  
9 or any Special Ed questions.

10 Definitely we have been trying to work with our  
11 SELPAs and our school districts to collaborate to have  
12 resolution meetings before it gets to the due process issues.  
13 So a lot of parents don't know that there is a one-eight  
14 hundred number to follow those steps or those procedures.

15 Also back on the training (inaudible) spoke at our  
16 meeting in San Diego in February, that was a question I  
17 asked. The tendency is for the attorneys, how often do they  
18 participate in IEPs or have community school site visits and  
19 he was unaware of any.

20 As a commissioner, I do go on school visits and we  
21 welcome you to come with us to any of the school visits so  
22 you can participate. I welcome you to my own son's IEP  
23 meeting so you can see how a IEP meeting is run. But I know  
24 any parent in our community in California would invite any of  
25 the judges or the attorneys on either side to participate.

1           **MS. SAVAGE:** Can I just confirm the hotline? It's  
2 1-800-926-0648?

3           **MS. NEWTON:** Correct.

4           **MS. SAVAGE:** And it's a hotline with the Department  
5 of Education?

6           **MS. NEWTON:** Yes.

7           **UNKNOWN FEMALE:** Is that the (inaudible)?

8           **MS. NEWTON:** Yes.

9           **UNKNOWN FEMALE:** Okay. That's not --

10           **ADMINISTRATIVE LAW JUDGE CLARK:** Can you identify  
11 yourself again, I'm sorry, for the CDE? The Commissioner for  
12 the CDE?

13           **MS. NEWTON:** Laurie Newton.

14           **ADMINISTRATIVE LAW JUDGE CLARK:** Can you spell that  
15 for us? I can't hear your last name totally.

16           **MS. SAVAGE:** Sure.

17           **ADMINISTRATIVE LAW JUDGE CLARK:** And I can't really  
18 see so I apologize.

19           **MS. SAVAGE:** The last name is Newton, N-E-W-T-O-N,  
20 and her first name is Laurie, L-A-U --

21           **ADMINISTRATIVE LAW JUDGE CLARK:** Good. Thank you  
22 very much.

23           **MR. ROSENBAUM:** And that's the Special Education  
24 Commission for the State Board of Ed, right?

25           **MS. NEWTON:** Yes.

1           **MS. BROCK:** But the phone number she gave is just  
2 the CDE safeguard.

3           **MS. SAVAGE:** But many parents aren't aware of it.

4           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Is there  
5 any further public comment from Sacramento?

6           **MS. SAVAGE:** We have one more.

7           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

8           **UNKNOWN FEMALE:** Kind of on the same note, talking  
9 about, you know, judges not going into Special Ed classes to  
10 see what's going on, what I'm concerned with, I mean since I  
11 had a dyslexic child and I work with so many parents who have  
12 kids who have reading disorders, what I am really upset is I  
13 don't see the judges understanding that when just because a  
14 teacher has a credential that they know how to teach reading  
15 because they don't.

16                   And if you go into -- and then when you get into  
17 Special Education Masters Degrees, very few of the, or  
18 actually none of the Masters programs offered nationally  
19 concentrate on reading, on teaching those teachers how to  
20 read to children who have dyslexia. They don't know how to  
21 teach to these children.

22                   There's about five standard methodologies that  
23 work, that have been well researched. But they're not part  
24 of any Masters program. And these are the people who are  
25 teaching our kids and this is what's going into court. And

1 that whole piece has just been totally ignored. And I'd like  
2 to see more -- I'd like to see more training with ALJs to  
3 understand what exactly these teachers are being taught in  
4 these Special Ed programs. Because there are some Special Ed  
5 programs that maybe concentrate of deaf or hard of hearing or  
6 maybe autism but reading never.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** Any further public  
8 comment in Southern California?

9 **MS. SAVAGE:** We have one more up here if you don't.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, we don't  
11 have any comment in Southern California. Go ahead in  
12 Sacramento.

13 **UNKNOWN FEMALE:** I would ask that both north and  
14 south consider something as part of an agenda item for a  
15 future meeting.

16 We as parents ran into an issue that we have  
17 basically checked among other people and looked at pleadings  
18 and talked to people and we've come to a conclusion that  
19 there is a problem that is somewhat statewide in regard to  
20 the IDEA requirement for districts to answer in regard to a  
21 pleading or to a case in ten days. And because of that we're  
22 running into an issue where we see the districts in other  
23 cases and our own not answering in that time frame. And when  
24 they're not answering us, we as parents don't have notice  
25 about what their response is to our filing until we go into

1 court.

2 We've heard of a couple of cases now where the  
3 attorney gets there and they still have not had an answer and  
4 IDEA does guarantee that. So my question is, that, you know,  
5 the Advisory Committee look at that and why we aren't seeing  
6 that, you know, in OAH being ruled upon and I know there are  
7 jurisdictional issues and all that, but it seems to me that  
8 we're here to make sure that IDEA is being enforced in the  
9 state.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** That is not the  
11 purpose of this Advisory Committee, that OAH is charged with  
12 implementing a contract and providing a fair hearing but this  
13 Advisory Committee is talking about the mediation and process  
14 that we have control over for the process that OAH has.

15 Changes of the status should be made at the  
16 legislature or CDE, the procedural safeguards unit. You can  
17 contact them if you're not getting responses. But again this  
18 Committee is geared towards how OAH can improve access in the  
19 mediation and due process hearing, the process that we  
20 implemented at OAH.

21 **UNKNOWN FEMALE:** But the answer to this is part of  
22 the process at OAH because the answer is part of the due  
23 process.

24 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you  
25 very much. Ms. Kuperschmit has a comment down here.

1           **MS. KUPERSCHMIT:** Yes. I just wanted to get back  
2 to briefly to the (inaudible) that's being submitted via  
3 public comment about many parents feeling frustrated that  
4 they can't really access free or low cost attorneys and that  
5 OAH does have a list out there that includes attorneys that  
6 do provide free and low cost and as a provider of free legal  
7 services at Learning Rights, I would want to just (inaudible)  
8 in terms of what that actually means. Because I don't want  
9 to contribute to the frustration that I know parents feel  
10 even the ones that call our offices.

11           At least with regard to non-profit organizations  
12 that are on that list who I think I can hopefully speak for  
13 accurately, for a parent to qualify for free legal service  
14 you actually have to meet the Federal poverty guidelines. So  
15 we're talking about parents who are on public benefits,  
16 Social Security, Medi-Cal, very, very, very, very poor. I  
17 mean it takes somebody that poor to qualify for our free  
18 legal service and it's not a right. It's not a right like if  
19 you get sent to jail and you get a defense attorney.

20           We handle a list of over a hundred parents so I  
21 understand your frustration even just getting to our front  
22 door, just to get an intake appointment. But I just want to  
23 (inaudible) because it isn't a guarantee, it isn't an  
24 entitlement, the only thing that's a guarantee is that OAH  
25 will keep a list and that there are folks on that list who

1 can do it for free but I understand it's really hard to  
2 qualify. And I feel bad for that and wish there was  
3 something more that we could do. But that would take a  
4 legislative fix. But we'd be more than happy to work --

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you very  
6 much. We have another comment in Sacramento. And then we're  
7 going to close the public comments section. Go ahead.

8 **MR. ROSENBAUM:** I just want to go back to what Ines  
9 said. Steve Rosenbaum with Disability Rights California. We  
10 do have -- we don't have income limits, we do give priority  
11 to low income and rural and homeless and marginalized folks  
12 but different criteria.

13 We do have free consultation by phone. We can't  
14 represent every individual in mediation or at hearing or  
15 litigation but we do have five offices throughout the state  
16 and I'm sure people also complained about us as well. But it  
17 is a place that one can at least start and I think we're on  
18 your list.

19 And I was also going to suggest, not to open up a  
20 can of worms, but if people are actually finding that when  
21 they do call attorneys and they do believe they're not really  
22 low cost or don't meet whatever that self-certified standard  
23 is, they make that known to OAH and maybe if you have, you  
24 know, two, three, four complaints about somebody you take  
25 them off the list or you do some kind of preliminary inquiry.

1 Again, not to burden the office with a lot because it's a  
2 difficult thing to regulate a lawyer referral service, but I  
3 think those complaints should at least be heard if those are  
4 not genuine venues for assistance.

5 **MS. SAVAGE:** We have one final public comment.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** I think Mr. Wyner  
7 has a comment as well. Go ahead in Sacramento.

8 **UNKNOWN FEMALE:** (Inaudible) about that. I  
9 actually ended up getting the papers for a seat on that  
10 Learning Rights Advocate for their student. We had  
11 prehearing conferences on the same exact day. I ended up  
12 with another student's hearing papers and all this  
13 information about the student. But that means that my  
14 hearing papers went somewhere else from our prehearing  
15 conference. We have no idea. I still never got my own  
16 hearing papers for the prehearing conference. Now we  
17 settled. I don't think Learning Rights (inaudible) my  
18 daughter is not in Juvenile Hall in LA, I know that.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyner?

20 **MR. WYNER:** I do. I have a couple of comments.  
21 First in response to Steve Rosenbaum, why not, first of all  
22 why not post that list on your website?

23 **ADMINISTRATIVE LAW JUDGE CLARK:** It is on our  
24 website.

25 **MR. WYNER:** Oh, it's on your website. It's not

1 just in a notice. Okay.

2 And why don't you -- why can't there be some kind  
3 of monitoring of that where law firms have to indicate how  
4 many pro bono cases they have taken within the last six  
5 months? You really have people that have never taken, I know  
6 people think I'm very expensive, but I've taken cases that  
7 people cannot afford to pay on. So, you know, maybe there  
8 are people on that list who can't say that. They ought to  
9 come off.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you very  
11 much. Anything further from Southern California? Mr. Wyner?

12 **MR. WYNER:** Since I may not be around any more --

13 **UNKNOWN MALE:** In this Committee.

14 **MR. WYNER:** I'll re-apply but I may not be here it  
15 sounds like.

16 But I think at the next meeting what I'd like to  
17 see on the schedule is some discussion about what it means  
18 where the statute says that OAH will not apply the technical  
19 rules of evidence. It's a really nice statement but you know  
20 I listen about subpoena stuff and then about a witness who  
21 could testify, we'll stipulate the witness can testify, and  
22 stuff like that.

23 So to all you parents who aren't represented, when  
24 the hearing officer gives you a ruling and it sounds like the  
25 law, why don't you just say that there are no technical rules

1 of evidence. I want this person to testify. And I think  
2 that ought to be discussed. Because I think there's a whole  
3 lot of technical rules of evidence that are applied  
4 throughout the entire hearing and in the decision.

5 So this is (inaudible) to people that the technical  
6 rules of evidence do not apply. So you have to think about  
7 that.

8 Second thing, how is it that you can never get in  
9 any evidence of really what the placement looks like? You  
10 know, you've got other kids who are in the placement and, you  
11 know, a lot of parents have the view once you go into a  
12 special day class you're never coming out. Why can't we get  
13 the school to tell us what has happened to all those kids?  
14 What kind of track record do they have moving kids from  
15 special day classes into mainstream education?

16 And then some of them try to collect the data on  
17 what happens to these kids after they turn 18 and after they  
18 turn 22. Because as upset as we are today about what's  
19 happening and you have an autism epidemic, these people,  
20 these students are going to have like 50, 60 years of life  
21 left. Who in the world is going to support them when they  
22 cannot live semi-independently? And I don't know whether  
23 that will get on the agenda or not but --

24 **ADMINISTRATIVE LAW JUDGE CLARK:** We appreciate your  
25 comments though.

1           **MS. SAVAGE:** We have one final --

2           **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you to  
3 everybody --

4           **MS. SAVAGE:** I'm sorry I missed a couple of  
5 comments. So we do have one more.

6           **ADMINISTRATIVE LAW JUDGE CLARK:** And the public  
7 comment section will be closed after this comment. We have  
8 to have (inaudible) on the internet so I want everybody to  
9 know they have been heard now at this point.

10          **MS. SAVAGE:** Go ahead.

11          **ADMINISTRATIVE LAW JUDGE CLARK:** Go ahead.

12          **UNKNOWN FEMALE:** Well, following like what Mr.  
13 Wyner said, you know, on the deal with having all these --

14          **ADMINISTRATIVE LAW JUDGE CLARK:** Can you state your  
15 name? I'm sorry.

16          **MS. HANSEN:** My name is Robin Hansen. I'm on the  
17 Community Advisory Committee for Special Education in San  
18 Francisco.

19          **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you.

20          **MS. HANSEN:** What Mr. Wyner said about, you know,  
21 these kids eventually is what I brought up earlier. It's  
22 like the spirit of IDEA. It's these kids, what the judges  
23 needed to consider when they make these rulings that these  
24 kids are supposed to have according to IDEA 2004, maximum  
25 self-sufficiency.

1           Now the thing is, is that you keep, when I bring up  
2 this stuff, you say, oh, go to your legislators. No, no,  
3 this the law. And I don't see it being followed. That's the  
4 problem. It's not about going to my legislator. Even  
5 something as simple as a ten-day response. That isn't a  
6 legislative thing, that's something that's in the law now.  
7 We don't see it being followed.

8           That's what's frustrating for parents like myself.  
9 The end.

10           **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you very  
11 much.

12           Okay, at this point the next item on the agenda is  
13 to talk about when we're going to meet again but because  
14 we're going to be selecting a new Committee and the next  
15 meeting will be in October and I'm going to table that and  
16 I'll send out some dates once we pick the new Committee or  
17 figure out who the members are for the next year which will  
18 be done in May. So I'll send out some dates for everybody to  
19 consider but we're looking at a date in October for the  
20 Advisory Committee for the next time around.

21           I just wanted to take a moment now and just thank  
22 everybody who has participated in the Committee because there  
23 are some people who are not likely to be on the Committee  
24 because they have served their two years.

25           And I really appreciate all of your time, all of

1 your efforts, all of your ideas and input and I know that  
2 this process can be frustrating and I also understand that  
3 the Special Education picture in general in the larger  
4 context is frustrating for everybody, but OAH -- it's  
5 important to OAH that we do our best to do our process right  
6 and it's invaluable that you give us the time and your input  
7 and we appreciate that.

8           So the Committee in Sacramento, thank you, and also  
9 the Committee here in Los Angeles, we appreciate it and thank  
10 you very much for your time.

11           And more importantly and just as important I should  
12 say, I want to thank the parents for you coming here, for  
13 your participation on the webcast and also for your comments  
14 here today. Again I know it's a frustrating process. I  
15 understand that there are some bigger system-wide issues that  
16 are bigger than OAH, yet this might be the only venue that  
17 you have an opportunity to express those.

18           There is that council, Department of Education  
19 Advisory Committee and I appreciate that and Ms. Newton being  
20 here from that Committee here today. But there are places  
21 for you to take your frustrations and to take your ideas that  
22 might be able to improve the process that are beyond the  
23 scope of OAH and beyond the scope of this Advisory Committee.

24           But I do again appreciate all of your time coming  
25 here and your input and also on the webcast participating as

1 well, so I thank everybody for that.

2 At this point I think we're adjourned for the day  
3 and I appreciate all your comments about the advisory  
4 process. I'm going to put that all into some type of cogent  
5 process and let everybody know what it is so that we can put  
6 it on the website and everybody has an understanding of how  
7 you get on the Committee and what the purpose of it is also.

8 Thank you all for participating and good afternoon.

9 Thereupon, the meeting  
10 was adjourned.)

11 --oOo--  
12 \* \* \* \* \*  
13 \* \* \* \* \*  
14 \* \* \* \* \*

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF TRANSCRIPT

This is to certify that I, Terri Cohen, transcribed the tape-recorded public meeting of the Special Education Advisory Committee dated April 20, 2010; that the pages numbered 1 through 155 constitute said transcript; that the same is a complete and accurate transcription of the aforesaid to the best of my ability.

A rectangular area containing a handwritten signature in cursive script that reads "Terri Cohen".

---

Terri Cohen  
May 23, 2010  
Statewide Transcription Services  
(916) 624-4300