

OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

OCTOBER 15, 2008
9:00 A.M. - 4:00 P.M.

CARMEL ROOM
320 WEST 4TH STREET, 1ST FLOOR
LOS ANGELES, CA

Official Transcriber: Terri Cohen

COMMITTEE MEMBERS PRESENT:

JANEEN STEEL, Chairperson
JONATHAN READ, Co-Chairperson
VALERIE VANAMAN
BARBARA SMITH
GARY LEVIN
PAUL MCIVER
CECILIA CHANG
STEVEN WYNER

COMMITTEE MEMBERS ABSENT:

CHRISTINE ENGLISH

ALSO PRESENT:

SHERIANNE LABA, Administrative Law Judge

P R O C E E D I N G S

1
2 JUDGE LABA: Good morning, everyone. Welcome to
3 the Special Education Advisory Committee meeting. There are
4 -- out in the front lobby there are a couple of handouts.
5 One is the Parent Manual which is in draft form. Please take
6 it home, take a look at the Parent Manual and submit any
7 comments or questions or additions that you'd like to see --
8 changes to the manual. The information on how to submit
9 those changes is on the front cover of the Parent Manual.

10 Also out front is an agenda which lists all of the
11 agenda items that we're going to be talking about today.
12 You'll actually see two agendas stapled together. The first
13 on the top is the revised agenda which is in a question-
14 answer format and has the recommendation sheets attached to
15 it. And towards the back of that is the original agenda that
16 the Advisory Committee proposed. We simply worked with the
17 Advisory Committee to put the questions into more of a
18 question-answer format but please feel free to discuss any of
19 the items that are on either agenda. They're all out there
20 for the public to consider and discuss.

21 At this point, I'd like to turn the meeting over to
22 the Advisory Committee and start with having them introduce
23 themselves. And I'll start with the Chairperson who will be
24 running the meeting.

25 CHAIR STEEL: Hi, this is Janeen Steel from
26 Learning Rights Law Center. So I welcome everybody to the

1 Advisory Committee and I would like to start with
2 introductions. So, Valerie?

3 MS. VANAMAN: Yeah, I'm Valerie Vanaman. I'm an
4 attorney who represents parents and families.

5 MS. SMITH: I'm Barbara Smith. I'm a Resolution
6 Specialist with Capistrano Unified School District.

7 CO-CHAIR READ: I'm Jonathan Read. I'm an attorney
8 with Fagen Friedman and Fulfrost representing school
9 districts.

10 MR. LEVIN: Good morning. Gary Levin with LA
11 County Office of Education. I'm the Compliance Officer.

12 MR. MCIVER: Paul McIver. I'm the District Chief
13 of Los Angeles County Department of Mental Health.

14 MS. CHANG: Hi.

15 CHAIR STEEL: You know, it's real hard to hear Paul
16 actually. Is there a sound problem because either --

17 MR. MCIVER: It's on.

18 CHAIR STEEL: The lights are on but is it working
19 because I can't hear him.

20 MALE: We're working on it.

21 MS. CHANG: Hi. my name is Cecilia Chang. I am
22 with the foundation. We work with the children with early
23 intervention and specifically with autism and I represent
24 parents and myself. I'm a parent with a child with special
25 needs.

26 CHAIR STEEL: All right. This is our first meeting

1 and so I think that the rule is to give advice to OAH for
2 procedures and the support and it's all open because that's
3 what -- this is the first meeting so I don't think there
4 is -- we want to have some discussion about how to go
5 forward. And so we'll go through that today. It's a long
6 day so I want us to just get as much out of it as we can.

7 Also, too, just some housekeeping issues. We have
8 lunch between 11:45 and 1:00 and that there will be public
9 comment throughout the day with -- on specific issues but
10 that between 3:00 and 4:00 there will be open public comment
11 for any issue, as well if there are additional issues that we
12 have with the Committee that come up. So, there (inaudible)
13 just as -- I guess we'll keep going.

14 If there is -- I guess we have the format. The
15 Structural Changes Committee -- we might actually talk about
16 that later -- unless somebody has some objection -- to sort
17 of see how it goes and if there's any structural changes that
18 need to be taken. We can look at that later. If anybody has
19 any objection I'd like to take that later to see how it
20 works.

21 CO-CHAIR READ: Sure.

22 CHAIR STEEL: I think we're going to start with
23 each of the sections, right?

24 CO-CHAIR READ: Yeah.

25 CHAIR STEEL: So I'm actually going to start with
26 some of the issues. What happened is that the Committee came

1 up with certain specific issues for the agenda and they're
2 outlined in here. There's two sections. You'll see the
3 agenda in your packet as well as the actual agenda that was
4 suggested from the Advisory Committee. They're both in your
5 packet. And you'll see the format is there's an agenda item,
6 a proposed recommendation, as well as a final recommendation.
7 So it's a comment. If we don't come up with a final
8 recommendation at least we have a discussion that gets us
9 started with it. The hope is that we can actually give a
10 recommendation to OAH. All right.

11 So the first question that we have regarding -- and
12 I'd like some input and the discussion to start on -- the
13 question is that -- hold on one second. Excuse me one
14 second. Okay.

15 So how is the new calendaring system working? Are
16 there any recommendations for the change? My understanding
17 of the issue was that there was discussing of the calendaring
18 of cases that were more amenable to scheduling difficulties
19 of the parties. The changes were again addressed -- they
20 were discussed in April, they were again addressed in July,
21 and there was a form offered for continuances for initial
22 hearings and mediation dates with agreement of the parties.

23 Also OAH began scheduling single-ended issues,
24 meaning single day hearings, and, you know, so I think
25 there's a discussion of what's working, what's not working,
26 because there's a current issue that there is again

1 scheduling of a single day and then you have the form to fill
2 out. So I guess the discussion is, is that working? What
3 are any recommendations for changes to the current
4 calendaring system?

5 MS. VANAMAN: I'd really like to hear Judge Laba on
6 this first bullet item, "What are the goals and restrictions
7 related to calendaring?"

8 JUDGE LABA: Valerie, I couldn't hear your
9 question.

10 MS. VANAMAN: Yes, the agenda has as the first
11 bullet under calendaring "What are OAH's goals and
12 restrictions related to calendaring" and it has "PALJ Laba"
13 and I'd really like to hear that.

14 JUDGE LABA: And what Roberta Savage had asked is
15 she thought it'd be helpful if the Committee knew what
16 restrictions we're working within before making
17 recommendations about calendaring changes, etcetera.

18 As you know, we work within the 45 day timeline for
19 ensuring that the decisions are issued on time. So one of
20 the goals that OAH has to accomplish is we need -- if you're
21 going to need additional time for the hearing we need to be
22 able to identify that as early in the process as possible
23 because if a ticking clock that's going along, step by step,
24 until you actually continue the case. So until you agree to
25 continue and extend timeline we're using up days that would
26 be needed for writing, etcetera. So we would like a system

1 that identifies as early as possible the fact that the date
2 that we're giving you isn't going to work for you.

3 The other thing is the Federal government requires
4 us to give you an initial hearing date so we can't just
5 schedule a trial setting conference right up front or
6 anything like that. We're required to give you that initial
7 date. So our major concern is making sure that we meet that
8 45-day timeline. We have to give you an initial date.

9 And the other thing is, as you know with the State
10 of California we're working within limited resources. So
11 being able to hold trial setting conferences for every case
12 is probably not feasible with the employment resources that
13 we have available to us. So that's just a factor to
14 consider. I'm not saying it's impossible but it makes it
15 really difficult because hiring is very difficult in our
16 current budget within the State of California.

17 So I just ask that as you consider the changes --
18 we've changed several times throughout the last couple of
19 years trying to find the right mix that makes the most people
20 happy with the system and we went back to the initial hearing
21 date after -- one initial hearing date after comment from
22 everybody that that's what they'd like but I know it's not
23 working for everybody. I don't know if it's just the form is
24 too confusing or there's not enough information being shared
25 or what the issue is but as long as we keep in mind the 45-
26 day timeline, ensuring that we get a continuance as early in

1 the process as possible to allow enough time to write the
2 decision, and that we think about the resources that we have
3 available to us.

4 MS. VANAMAN: You know, I find it hard to believe
5 that there's actually a system in place given what I see
6 coming out. I, for example, filed a due process complaint in
7 which I waived mediation, asked that the matter be set for
8 four days, and that it be heard as soon as possible.

9 The response I got was a form from OAH which set a
10 mediation date for November the 3rd, a hearing date for two
11 and a half weeks later, a single date, and then put that the
12 decision date that the decision should be rendered by was the
13 date on which the mediation had been set. Now that was a
14 case on which I really did want to go directly to hearing and
15 I wanted to do it quickly. I was very clear in my pleading
16 that I wished to do that. That was totally ignored.

17 On the other hand, there will be cases in which
18 there is a joint agreement of the parties that something
19 needs to be continued, a joint motion will be filed signed by
20 both parties where it's absolutely in the best interest of
21 the institution of education, the educational institution,
22 and the child, and most importantly in having a cooperative
23 working atmosphere between the students and the student's
24 parents and the district which is at the end of the day the
25 best we can hope for from this system in many many ways. And
26 that will be denied on the basis that there is no good cause.

1 The California Rules of Court -- I think it's Rule
2 3.1332(b) and (c) have and set forth a number of
3 considerations for what are considered good cause. Among
4 those -- and I think it's Items 9 and 10 of subpart C, are
5 the provision that if there's no prejudice to either party
6 and there is a mutual agreement to the continuance that
7 should be a consideration for good cause.

8 So we find ourselves it seems to me in a time in
9 which on the one hand you tell us you want to meet the 45-day
10 deadline. When we ask to try and do that, that request is
11 ignored. And on the other hand when it is in the best
12 interest of everyone and there's mutual agreement from two
13 attorneys -- one for the district and one for the parent --
14 that a continuance is appropriate and necessary that request
15 is denied. So that I am truly feeling schizophrenic and I
16 know there are those who think I may be that anyway but I am
17 feeling schizophrenic --

18 MR. MCIVER: I'm the only one at the table that
19 could have an opinion on that.

20 MS. VANAMAN: -- in terms of -- I'm truly feeling
21 that way in terms of the system because I seem to be damned
22 if I do and damned if I don't and I don't know how to make it
23 work in a way that benefits -- at the end of the day --
24 Special Education. And by that I mean the institution of
25 Special Education for the student as well as the institution
26 of Special Education for the agency that has to deliver the

1 services. And there just does not in fact seem to be any
2 rationale going.

3 I'm interested in the citation to the Federal law
4 that says you're required to give us a trial date. I'm also
5 interested in the analysis that sending us out something that
6 sets a mediation date on the date in which you say the
7 decision is due somehow meets that requirement. It doesn't
8 seem to me that the whole thing is coming together.

9 I understand that there's a resource limitation in
10 terms of the trial setting and I wouldn't object to the
11 system you're now using if there was some -- if there was
12 some ability or someone who's not the newest OAH hearing
13 officer on the block to be making the decision. Your motions
14 stop, your trial setting stuff has to be done by the most
15 experienced people you have -- not people who are brand new
16 to the system because they don't have the benefit of having
17 seen the ins and outs of the system.

18 And then if there was someone who would exercise
19 judgment in a way that was consistent with the interest of
20 the parties and not some blind adherence to these dates. You
21 know I just don't know what to do at this point because I
22 can't figure out what's going on.

23 CO-CHAIR READ: If I could follow up on that -- and
24 I don't know if my microphone's on. You can hear me all
25 right? I think the first problem that I'm hearing is that no
26 one quite understands exactly what the calendaring system is

1 and I know it's gone through a few evolutions.

2 And so the first proposal I guess I would make
3 would be for this information to be posted and I think it
4 would probably be helpful to include the rationale -- the
5 specific rationale that Valerie talks about as to why these
6 limitations are in place so everyone knows the constraints
7 that OAH is under and we can do our best to work within those
8 constraints.

9 The second part is that I think it's in the
10 interest of all parties that they understand exactly what
11 they can expect from hearing dates. And what I hear Valerie
12 saying is we really need to understand what good cause is for
13 a continuance. If we believe that traditionally here in
14 California a stipulation by the parties is sufficient good
15 cause then we ought to be able to predict that and inform our
16 clients.

17 But even aside from a stipulation if we have more
18 information -- not only for our benefit as to what
19 constitutes a good cause for a continuance -- also I think it
20 resolves that problem with judges rendering inconsistent
21 decisions about what is good cause by having some parameters
22 that are known to everyone as to what is good cause for a
23 continuance. And I'm not saying that that list would be an
24 exhaustive list but I think there are basic items that could
25 be included on that that everyone would understand.

26 CHAIR STEEL: Any other? Are there any comments

1 from the public? From the community? Please introduce
2 yourself. And also, too, are we taking notes? Did someone
3 inform them? Okay, good.

4 MS. NAVER: Good morning. Devora Naver on behalf
5 of LA Unified School District. I just want to echo Ms.
6 Vanaman's concerns. We do work with her office extensively
7 regarding continuance requests and stipulations and also just
8 to echo what Jonathan Read has said about what really
9 constitutes good cause.

10 One of the things that concerns our district is
11 that continuance requests are -- the rulings in the
12 continuance requests do not have rationales. It just says,
13 'Denied,' with no rationale whatsoever. So I would request
14 that OAH actually provides a rationale with regards to their
15 rulings. Thank you.

16 CHAIR STEEL: Judge Laba, are there any from the
17 internet?

18 The question is, "Is the agenda different from the
19 one that was downloaded from the website?" Answer see link
20 at --

21 JUDGE LABA: The question that came in from the
22 public on the webcast is whether the agenda was different.
23 And for that person who is listening, the final agenda that
24 we're working on is a link on the left-hand side of the
25 screen. If you don't mind I have another housekeeping
26 question that came up.

1 The question was, "On the original agenda, there
2 was a matter of great importance brought up about the
3 intersection of OAH and CDE. It is absent from the final
4 agenda. Was that an oversight or deliberately omit from the
5 final agenda?"

6 And CDE was not able to send anybody from their
7 compliance department to this meeting as requested so we
8 aren't able to have that discussion with CDE. They're a
9 vital part of that discussion so I'm hoping they'll be
10 available for the next meeting. So we did take it off the
11 final agenda because CDE could not have somebody attend this
12 meeting.

13 CO-CHAIR READ: So, I take it we're going to put
14 that on next meeting's agenda?

15 CHAIR STEEL: Next meeting.

16 MS. VANAMAN: Janeen, the bullet item that's here
17 is, "How is the new calendaring system working?" I think the
18 answer is it's not working very well. And so then the next
19 bullet item is, "Recommendation for changes," and I actually
20 do have a couple of recommendations for changes if that's
21 what we're moving to.

22 CHAIR STEEL: Yes, absolutely.

23 MS. VANAMAN: I think that in making the
24 calendaring system one that is agency- and user-friendly,
25 there are three things that need to be done. Number one,
26 whomever is in charge of it at OAH needs to be the most

1 experienced person you have. This cannot be the entry level
2 training ground. It has to be if you work your way up to it
3 and you manage it from a place of experience, knowledge,
4 background and an understanding of the complexities that this
5 area of the law and the personalities involved in it present.

6 Secondly, you seem to have a revolving set of
7 clerks. You've had difficulty with retention so that the
8 written stuff that's being sent out appears to be being given
9 to clerks to put out and it doesn't always make any sense and
10 it's not consistent with what may have been requested.

11 Whoever is in charge of the calendaring system as their job
12 has to be someone who is also supervising and ultimately
13 responsible for the quality of the paperwork that goes out.

14 And third, I don't understand why you view
15 yourselves as not having the same flexibility as a superior
16 court or a Federal court has in terms of looking at motions
17 and what good cause constitutes. We have a well developed
18 set of civil rules in California. The California Rules of
19 Court have been gone over and over and over numerous times in
20 terms of this very issue because in Superior Court there also
21 is a calendaring need. There also are deadlines by which
22 cases have to be tried. I mean they've had the same kinds of
23 restrictions that you claim you have under the Federal law
24 and there isn't any reason that -- it doesn't seem to me
25 there is no reason that those considerations which are set
26 out in the California Rules of Court could not be applied in

1 a consistent manner to what's going on.

2 The notion that because you continued it once using
3 the form you are precluded from ever and always continuing a
4 second time is in reality being gotten around by all of us by
5 going to mediation and at mediation getting it done through
6 mediation. Now the reality is that in this particular
7 practice in 2008 there are some school districts with whom
8 mediation is no longer possible from a parent perspective and
9 therefore we don't want to waste time, effort or money on
10 either side going through the mediation process and yet we're
11 being forced to do that simply to get mutually agreeable
12 hearing dates.

13 We ought to be able to do that in a way through
14 your system that even if the two attorneys are unable to
15 speak to each other, you at least do have in those cases the
16 ability to still conduct some sort of a trial setting
17 conference instead of simply rejecting it on the basis that
18 the attorneys couldn't agree. There are as to some of us the
19 reality that you're never -- at least at this point in
20 history -- going to get agreement between the two of us. Not
21 going to happen. And in fact that's why you exist it seems
22 to me -- is to resolve those disputes.

23 So that if you're going to continue this system of
24 setting the dates and allowing these initial papers to be
25 filed that's fine. But you need to then understand and have
26 some established rules that you're going to recognize there

1 may be a further need for a continuance or further
2 consideration of it. And I don't know why you cannot
3 announce that you're going to be following the California
4 Rules of Court with regard to that kind of a motion practice
5 and what constitute good cause. Those have been heavily
6 litigated by lawyers in this State for at least 50 years and
7 the case law is pretty clean on it. It's an easy way to
8 apply it. You don't have to reinvent the wheel. It just
9 makes no sense to reinvent the wheel.

10 And I agree with Jonathan, I guess, at the end.
11 What I'm asking that you do is take that system, make it
12 transparent, put it out there and then let us proceed with it
13 and that you add a provision that a parent has the right to
14 waive mediation and have the matter set for hearing if they
15 want to do that within the time of -- the number of days they
16 ask to have it set -- or a district for that matter if they
17 want to do it.

18 CHAIR STEEL: I have one comment which is do we
19 know the average day of hearings because setting it --
20 because, Valerie, one of your first comments was regarding if
21 you want to go straight to hearing that if you have a one day
22 set -- I don't know what the average hearing -- I've never
23 had a one day hearing. So if I want to go straight to
24 hearing and I don't want a continuance because I need more
25 than one day what is the average days of hearing? So if the
26 average hearing in California is three days why aren't we

1 setting all the hearings for three or five days? I guess
2 that that was my question. Because otherwise every single
3 hearing will have to be continued from that first day.

4 MS. VANAMAN: And not meet the 45-day time line.

5 CHAIR STEEL: That's right. So do we know what the
6 average hearing days are in California? Okay. So that would
7 be -- I mean that's important. My understanding is that I
8 don't -- unless anybody has had one for one day in
9 California --

10 MS. VANAMAN: You know, I don't have any objection
11 if they schedule -- the normal course where you're not
12 waiving mediation -- to one day. Maybe it's the only way to
13 do it. But if a party -- be it the District or the parent --
14 puts in their filing or puts in their request and we're
15 waiving mediation. We wanted to the maximum extent possible
16 meet the 45 days because we all know that none of us are ever
17 going to really do that -- but to the maximum extent possible
18 we want to meet the 45 days and I want 4 days -- why that
19 request can't be honored. Why do we find ourselves being
20 denied that if it is the intent of OAH to try and meet the
21 45-day requirement?

22 CHAIR STEEL: So we have a lot of recommendations.
23 So I think -- I'm going to review some (inaudible) fill in
24 where we're at -- do you -- I have, you know, the -- or do we
25 want to do that now?

26 CO-CHAIR READ: What I think is since we have so

1 many things on the agenda I'm keeping the minutes of this
2 meeting and then I'm going to turn them over afterwards to
3 Judge Laba who will be posting the minutes on the OAH website
4 if I'm not mistaken. Judge Laba correct me very quickly if I
5 didn't understand that correctly. So the minutes will be
6 available to everyone and they'll include the recommendations
7 that come out of the discussion.

8 CHAIR STEEL: Sounds great. So I'm going to move
9 to the next question. "Should hearings be recorded by court
10 reporters?" Issues were raised by both areas -- both
11 Southern and Northern California about obtaining an accurate
12 transcript of due process hearings and the ability of the
13 parties to have witness testimony read back to them -- hold
14 on -- read back to them and if there's a question regarding a
15 witness's prior testimony. So that's the question. Do we
16 want to have court reporters?

17 MS. VANAMAN: Who's going to pay for that? I'm
18 probably the only person in this room who's done an
19 administrative hearing done with court reporters because
20 there is a school district that shall remain nameless who
21 uses an attorney who is not admitted to practice law in
22 California who insisted on doing that. It was lovely to have
23 and the three appeals that have proceeded from those cases
24 but the cost was phenomenally high. I mean I think we paid
25 almost -- I tried to find the bill last night because we of
26 course had to pay half of it -- we being the parents -- and

1 the District paid the other half. And I think the cost was
2 just astronomical. Who's going to pay for these court
3 reporters?

4 MR. MCIVER: I would have the same question. If
5 it's as Judge Laba says that it's difficult in these
6 budgetary times just to hire and retain staff to do the basic
7 work this may be a luxury that we cannot afford.

8 CO-CHAIR READ: I think the issue came from
9 Northern California and I'm not positive whether the issue
10 was whether court reporters should be available at all
11 hearings as opposed to whether, you know, with the agreement
12 of the parties or the request of one party the hearing could
13 be reported by a court reporter.

14 MS. VANAMAN: Well, let me tell you how SEHO
15 handled this which I think is how this was last handled. The
16 District made a motion to have a court reporter present. I
17 initially -- just because I'm oppositional -- I opposed that
18 motion basically on cost grounds and said 'Who's going to
19 pay?' I was then told that SEHO would in fact allow the
20 court reporter but that if I wanted to get the same copy of
21 the transcripts the District was getting we had to come up
22 with half the money. Now that didn't seem fair to me at the
23 time but it wasn't -- in hindsight. It didn't seem worth
24 litigating that particular issue at that point in time.
25 Obviously for indigent clients and for most clients that's
26 prohibitive and then what you get is an unfair advantage of

1 just the District having the access to the transcripts. He
2 was getting daily transcripts. That you just have the
3 District getting the daily transcripts. And so it has to be
4 it seems to me one of those pre-hearing motions that if
5 someone wants to make the motion to do it, OAH is going to
6 have to rule on it as that motion is made. I certainly don't
7 think people should be precluded from making the motion. It
8 is an enormously expensive operation however and I certainly
9 don't believe there's any law that requires OAH to bear that
10 cost.

11 CHAIR STEEL: Any other comments? Any?

12 MS. SMITH: On a sidebar note I certainly would be
13 concerned about cost. However I also know that we have had a
14 problem in at least one case getting the transcripts from OAH
15 in time to meet judge-ordered requirements in appellate
16 cases. So we just have to really watch those timelines on
17 turning around those transcripts.

18 CHAIR STEEL: Any comments from the public? I have
19 one from our webcast. "In reviewing the agenda I'm happy to
20 see many important and long overdue points listed. Due to a
21 judge misquoting testimony among other reasons my son's due
22 process is now pending in Federal court. Court reporting
23 should be an immediate priority. On this same token my son's
24 PHD recording was lost. The PHD contained valuable
25 information and due to its misplacement by OAH my son was
26 damaged and is another reason why his case is now pending in

1 Federal court."

2 I guess I just have one question before we move on
3 which is, is there any other capacity in the recording device
4 to be able to go back and repeat testimony? I know that in
5 some recordings, you know, some -- there are some ways that
6 you can do audio recordings that you can go back and forward
7 and that would be something I would wonder about if there was
8 that capacity to look into.

9 Next question is "Should hearings be set at a
10 neutral location rather than at the School District?" It's
11 whether they should be set default at the School District or
12 more in a more neutral place. Open to --

13 MS. SMITH: I just wanted to respond to that. In
14 Orange County we do both. And I think that flexibility works
15 well when parents or for any reason it's easier to do it at
16 the OAH office or if the parents ask for it we have it there.
17 But we have capacity to do it in our District office and that
18 is better from a cost standpoint if we have a lot of District
19 witnesses who are lined up waiting to testify. So I think
20 that should be left to the parties to agree to.

21 MR. LEVIN: With L.A. County Office of Education
22 we're 4,000 square miles and I think for -- we've never been
23 to a due process hearing but I think it would be easier at
24 the school district office.

25 MS. VANAMAN: Does anyone understand how much we
26 suffer having to do that? We just learn to suffer over the

1 years. We have no private space for phone calls. We find
2 ourselves wandering around trying to find a place. We have
3 no place to meet with our witnesses. We -- you know, you
4 guys have all sorts of space and amenities and access to all
5 sorts of stuff we don't have. We gave up this fight. I
6 mean, you know, we used to fight about arranging the tables
7 in the room but we sort of gave up this fight a long time
8 ago. But it really is a disadvantage to parents that we have
9 to go to school district offices. It just is. I mean it's
10 just the reality of the world we live in. I will say that to
11 OAH's credit it's been an improvement that they've insisted
12 that we not be put in nine by ten rooms with 15 people. And
13 I really appreciate that. I mean it's great that they've
14 actually insisted that there be some decorum in the room that
15 we're in. Is this a fight worth having? We've got real
16 important -- I mean --

17 CHAIR STEEL: Any comments from the public?

18 JUDGE LABA: I have some data that you asked for
19 earlier. It takes a minute for them to get it to me.
20 They're monitoring at the office so as you ask the question
21 they can get it for me quickly. The average number of
22 hearing days is five and the cost of court reporters runs
23 from \$450 to \$540 per day. The digital recording equipment
24 that we use is initial purchase priced and then to transcribe
25 it is \$2 to \$4 a page depending on the time frame for getting
26 the documents back. If that helps with your discussion.

1 CHAIR STEEL: Great. Thank you. Is there any
2 comments? Thank you, Judge Laba. Is there any other
3 comments about the neutral --

4 MS. VANAMAN: I do think that it's helpful -- I
5 mean I've actually become fond of these pre-hearing
6 conferences because I think that there is within the
7 provisions of that when they ask you at the end 'Is there any
8 special stuff you need?' Those districts that don't have
9 parking for example and those districts where you know you're
10 not going to have space. I think it's appropriate at a pre-
11 hearing conference to ask for an order that the district
12 provide you with confidential space, that they provide you
13 with parking, that you have the ability to address that kind
14 of stuff in those settings.

15 MR. MCIVER: I agree with Valerie on that and the
16 desirability of maintaining maximum flexibility is the key.
17 And that should be the topic of discussion. The setting of
18 the hearing, the location and all those other accommodations
19 whether it's for district or other agency staff or parent.
20 It should be discussed in pre-hearing conference.

21 CO-CHAIR READ: I would just add -- I think the
22 current flexibility works from what I've seen. As far as
23 comments regarding facilities I agree that it's in the best
24 case scenario for all parties to have plenty of room and also
25 separate rooms. I'm not sure that concern is alleviated by
26 having the hearings completed at a neutral location having

1 just completed a hearing a few months ago in the basement at
2 the State Building in San Diego but I do understand that.
3 And I think it's a goal of all parties.

4 I also think when we're talking about minimizing
5 disruption we're also talking about minimizing disruption for
6 everyone. I know the parents are taking time off work to go
7 to hearing and want that to occur in a neutral location but
8 we also have teachers, speech and language therapists who are
9 getting subs for the day, and we're trying to disrupt the
10 effects of the hearing on other children within the school
11 district to the extent possible. So if it can occur at a
12 convenient location with acceptable parameters I believe
13 that's in everyone's interests.

14 CHAIR STEEL: I just want to add one quick comment
15 which is that one of the concerns we have is that we want
16 to -- when we're in hearing we don't think it's appropriate
17 to be really preparing while we're in our car in the parking
18 lot which is part of what happened in the last hearing we
19 were at. I had calls from the attorneys in the parking lot
20 because there was no place that was confidential in the
21 school. So I think in a pre-hearing conference if there was
22 some place to set up that there would be a place for them to
23 have a discussion with their clients in a -- rather than
24 parking lot, cars, a restaurant across the street. I mean I
25 think that that would be reasonable.

26 The other issue is no one has talked about those

1 parents that are not represented. So there needs to be
2 something that they're aware that they are taking care of it
3 if they go to hearing. You know, are they going to have a
4 place to go because they won't have an attorney that's going
5 to say 'Hey, I need a place to talk.' They're going to need
6 a private place and have that right to that. So some
7 conversation.

8 MS. SMITH: And back on the whole issue of
9 flexibility it is sometimes a hardship on parents to go down
10 the freeway ten miles or so especially if they have extremely
11 disabled children and they don't want to be that far from
12 where the child is during the school day. So I -- I know
13 there have been parents who have specifically requested to
14 have hearings at our District office because of its proximity
15 to where their children are located. So -- you know, I think
16 we have to try to do the best we can in terms of going with
17 what each party is willing to agree to and providing as much
18 -- I mean we have enough space in our location to provide
19 what Valerie is asking for but I recognize -- I used to be in
20 a very small school district. That would have been tough.
21 So each case is going to have to work it out I think.

22 CHAIR STEEL: Any other comments? Next question is
23 "Should all PHCs -- pre-hearing conferences be recorded?"
24 The question is raised in order to obtain information in
25 order to prepare for the due process hearing. So should they
26 be recorded?

1 CO-CHAIR READ: My thought is absolutely. Because
2 it's at the pre-hearing conferences where we're finalizing
3 the way the issues will be framed for the hearing. And
4 sometimes by the time you get to the decision or even in the
5 middle of a hearing it appears that those issues have evolved
6 somewhat. So for purposes of, you know, understanding the
7 issues completely by all parties and also understanding after
8 the hearing perhaps if there is subsequent Federal court
9 action exactly what the issues were. I think it is
10 absolutely crucial to the hearing process.

11 MS. VANAMAN: I have a question. Given that there
12 is no legal authority in California in the statutory scheme
13 for the pre-hearing conference what relevance do they have to
14 anything? That is, isn't it possible to say that whatever
15 took place there was without any legal authority and
16 therefore doesn't matter?

17 CO-CHAIR READ: I guess my response to that going
18 back to the SEHO days is often times with SEHO we would spend
19 at least half the day on the first day of hearing with -- you
20 know, taking care of business. Working out schedules,
21 discussing the issues and one of the advantages of the pre-
22 hearing conference is that it has taken the administrative
23 matters and also some of the non-administrative matters that
24 used to occur and take up a big part of the first day of
25 hearing out of the hearing schedule and into getting those
26 resolved beforehand. So I would say that it's something that

1 is part of the hearing and should be recorded as such.

2 CHAIR STEEL: Any comments from -- I have two
3 comments that came in from previous issues.

4 One of them is on the court reporter issue which is
5 "The lack of a Court reporter in my daughter's case weighed
6 entirely against her. It shouldn't be her concern as the
7 judge was completely at fault with his poor recall. The
8 transcript later proved that but then the student would have
9 to appeal in Federal court. This was unfair to the student."
10 That's regarding court reporting.

11 The next is regarding location. "It's very
12 intimidating for parents to go to the lion's den as some
13 feel. So it would be nice to go to a neutral ground like a
14 library or some other government building."

15 You want to move to the next question?

16 CO-CHAIR READ: Sure.

17 CHAIR STEEL: "How can OAH help unrepresented
18 parents access witnesses?" The issue is raised by an
19 unrepresented parent to address the disparity between her
20 ability to secure testimony by a local education agency
21 employed witness. The parent was required to subpoena all
22 the employed witness and was able to subpoena all of them and
23 actively avoided -- who actively avoided being served. OAH
24 did not step in to demand the presence of the employed
25 witness without a subpoena.

26 Any thoughts on that? There's actually a

1 proposal -- I think this person actually proposed a
2 recommendation that they should require -- "OAH should
3 require that the local education agencies make an LEA
4 employee witness available given the reasonable notice that
5 the opposing party wants and the -- have the LEA employee
6 testify. This would only apply to LEA's when they are named
7 the party in the hearing."

8 I think -- just to act on one of the concerns is if
9 it's an unrepresented parent and to allow -- we know that
10 people can avoid subpoenas. Attorneys know how to go about
11 doing that but an unrepresented parent may not. And so my --
12 our concern is that many times with your rep -- if it's a
13 represented parent then we can work it out to get those
14 witnesses. So it shouldn't be that, you know, they're more
15 at a disadvantage because they're not represented. These are
16 parents that actually should be looked at to actually provide
17 more assistance. So the recommendation to have some
18 coordination with OAH and the LEA would ensure that the
19 witnesses are there -- would make sense.

20 MR. MCIVER: And same would apply to other agencies
21 participating such as Mental Health and we've always made our
22 staff available for testimony with or without subpoenas.

23 CHAIR STEEL: Without. Any other?

24 MR. LEVIN: Yeah. It looks like in the draft of
25 the parent manual they do have a section on that which I
26 haven't had a chance to review yet.

1 CHAIR STEEL: Yeah.

2 MR. LEVIN: Maybe there needs to be more concrete
3 ways to do this so the parent can understand how to go about
4 it if they're unrepresented.

5 CHAIR STEEL: So there is a draft parent manual
6 that's in place. Maybe that's one of the areas -- what are
7 the steps that parents need to take? Any comments from
8 community?

9 MS. VANAMAN: I have a comment. The civility of
10 any system of justice depends on how well those who are
11 administering the system police that system in terms of
12 requiring civility from all of the participants. And if you
13 have a system in which certain standards are not set by the
14 agency or the court that's policing it you then allow those
15 who want to act with less civility than might otherwise be
16 desired to so act and take advantage of that.

17 Any of the issues that deal with civility between
18 the parties ultimately has to be telegraphed from the body
19 responsible for the judicial or the administrative
20 interpretation of the laws so that if the system is going to
21 expect attorneys on both sides of the fence to act with some
22 decent consideration and civility toward each other that
23 expectation has to be set in the expectations that are
24 telegraphed by those conducting the hearings.

25 And I understand that we are still five years later
26 -- or four years later -- fighting the SEHO wars but the

1 reality of the situation is that SEHO through its rulings and
2 through what it said to counsel in various contexts made it
3 very clear that there was a level of civility which was
4 required. And that level of civility included not forcing
5 either side to go running around the state to get subpoenas
6 served if the attorney for the individuals could in fact
7 produce the individuals.

8 It included recognizing that it was not civil to
9 withhold records which were in fact allowed to be admissible
10 and to be -- and had to be produced as a matter of law. It
11 set a standard of care for the attorneys which they looked
12 bad when they crossed over. One of the difficulties I think
13 we've had as we've had a whole new agency take over this area
14 is establishing that same notion of the standard of civility.

15 It should not be necessary to legislate the fact
16 that a school district who has control over the employees is
17 expected by the agency in charge to not make it impossible
18 for those individuals to appear. It should not be necessary
19 to have to go to Federal court to get records produced or to
20 State court to get records produced that you're entitled to
21 have as a matter of law.

22 The standard has to be set by those administering
23 the system of justice and it has to be telegraphed in case
24 after case where it says 'That's not acceptable, Ms. Vanaman.
25 I'm not going to accept that behavior from you.' And then
26 you begin to set the standard. What I think -- and we don't

1 need to have new legislation or new rules or anything else.

2 If there is a general recognition that we have to
3 have one, a fair playing field; that two, protects the rights
4 of parents -- unrepresented parents as well as represented
5 parents to a certain level of access to the system which
6 includes access to records and access to witnesses. And if
7 that's the standard that's telegraphed by the agency
8 administering the system we can all play by those rules. We
9 all know how to play by the rules. Or most of us know how to
10 play by the rules. And once we are told that these are the
11 parameters.

12 What I fear has happened is that while all of the
13 startup was going on that got lost a little bit. And as it
14 begins to come back I think you'll see civility return but I
15 encourage the agency to recognize its responsibility to
16 really set a consistent standard through what its
17 expectations are for all of the parties involved including
18 that you don't mess around with stuff that's a no-brainer
19 like production of records or like producing witnesses.

20 Particularly for the unrepresented parent I think
21 there is a higher standard and I think there is some need to
22 protect that individual with regard to the statutory scheme.
23 But it's a matter of civility. We don't need new rules. We
24 don't even need new regulations. We need the administration
25 of justice to work in an effective manner.

26 MR. MCIVER: Thank you for saying that, Valerie.

1 Because my thoughts were similar. It speaks to the next
2 question that I had raised for the agenda about etiquette and
3 decorum across the board.

4 In this example we're just mentioning access to
5 records or witnesses but it's pervasive. And I agree that it
6 should be OAH and the person of the hearing officer that sets
7 the tone and demands a certain level of performance and
8 etiquette of all the parties represented or not represented
9 and as an extension of that, we're required to do things in
10 the language of the parent and I think sometimes -- at least
11 in some of the hearings I've participated in or even some of
12 the mediations with and without legal counsel
13 participating -- I'm not always sure that the parents are
14 clear about what's happening in the proceedings. And I think
15 we have an obligation to make sure that someone -- that might
16 be the hearing officer -- explains in plain common language
17 what is occurring in the proceedings.

18 MS. SMITH: I just wanted to note that it's not
19 all bad. I don't know that -- obviously something happened
20 here or it wouldn't have come up. But we've had two hearings
21 since we have had OAH where they were rather long hearings
22 involving a lot of witnesses and a lot of records and the
23 parents were unrepresented. And the District was required --
24 or maybe -- I doubt that we actually volunteered to do all of
25 this but we did want to do a lot of it because we didn't want
26 to have any question about whether the parent had the

1 right -- you know, all of their rights covered at the
2 hearing. We not only provided everything but we actually
3 copied their entire evidence packet and tabbed it and
4 provided them to them in notebooks. So somebody asked that
5 that happen and I think it happened at a pre-trial maybe of
6 some type. That's one thing.

7 And secondly I would second what was just said
8 about civility on all sides and the importance of that. When
9 we have had hearings involving unrepresented parents I am --
10 and our school district are incredibly concerned that the
11 parents understand everything that their -- that goes on and
12 anything they agree to if it settles in hearing because we
13 don't want it later to turn into an appeal based on the fact
14 that the parent didn't have the opportunity to understand.
15 So anything we can do to be sure that they have all of their
16 rights met and in fact understand what's going on we are very
17 interested in having occur.

18 CHAIR STEEL: I mean I think we're seeing the same
19 problem because the other issue is that parents are held to
20 the same standard as the attorneys than when they are
21 represented and so they get filed with Notice of
22 Insufficiencies against them. They're being told with the
23 subpoenas and so I think that to make it fair and just
24 somebody has to have an understanding whether it's helping
25 them do the evidence packets or assisting them in arranging
26 for the witnesses it should not make it more difficult for

1 them than if they are represented. It's just that wouldn't
2 be just plain out fair. So I think that that's -- and that
3 actually -- and let me open it up. Is there -- is there any
4 other comments?

5 MS. CHANG: I have one.

6 MR. MCIVER: I have another comment that I don't
7 believe that heroic measures are needed to correct this --
8 like new legislation or something. But rather I think it can
9 be addressed in the training curriculum for hearing officers
10 and mediators about, you know, attitudes and approaches to
11 dealing with people from a very broad diverse spectrum in
12 society.

13 MS. CHANG: I'm looking at the packet that was put
14 out by Judge Laba and on page 29 of the draft it talks
15 about -- there's a number that the parents who represent
16 themselves can call and there should be an assigned OAH
17 support staff person and I wonder how -- what kind of level
18 of support can a self-representing parent can expect? I mean
19 it's quite -- it's humiliating from the parent perspective to
20 go ahead and try to navigate this without an attorney and,
21 you know, are they pretty well versed? I mean what kind
22 of -- I mean just putting up exhibit packets and evidence
23 packets and so forth. How much preparation and help can we
24 expect from this assigned person?

25 CHAIR STEEL: Judge Laba, do we know what level of
26 support is going to be provided for unrepresented parents?

1 MS. CHANG: I mean are they attorneys or do they
2 have legal expertise or at least law school student or --

3 JUDGE LABA: No. Our support staff personnel are
4 trained -- receive training in Special Education -- handle
5 the cases from start to finish. We cannot provide legal
6 advice. So we answer as many questions as we can without
7 providing legal advice.

8 MS. CHANG: And that is accessible by the parent.

9 JUDGE LABA: They are accessible by anybody. The
10 support -- the person that's referenced in that manual is a
11 support staff person that's assigned to the case.

12 MS. CHANG: Uh-huh.

13 JUDGE LABA: And that person is assigned from start
14 to finish for the case. So anybody can ask that person any
15 questions. But they cannot give legal advice.

16 MS. CHANG: Okay.

17 CHAIR STEEL: Comments?

18 MS. TAYLOR: Good morning. My name is Constance
19 Taylor and I'm an attorney for school districts from Atkinson
20 Andelson. I certainly think that civility is important in
21 the process and fairness is important for both sides.
22 Certainly for parents whether they're represented or
23 unrepresented. I do have some concerns about OAH ordering a
24 school district to provide access to District witnesses
25 whether parents are represented or unrepresented.

26 I do want to note that I haven't seen a change

1 between SEHO's administering hearings and OAH's administering
2 hearings. I think that under either hearing office there has
3 been the suggestion that the parties work together and make
4 District witnesses available and that Districts have
5 cooperated and have done so.

6 However there is a statutory scheme set up for
7 parties to subpoena witnesses and so I think that OAH would
8 not have the authority to order districts to make employees
9 available to parents when those witnesses were not already
10 going to be present at the hearing. And I don't think that
11 districts would have the authority and the control over those
12 employees to say 'I know you weren't going to be a witness
13 that we were going to call but you need to be available in
14 order for the parent to question you as a witness.' So it
15 would go beyond simply cooperating and being helpful to the
16 other side if a District were forced to make an employee
17 available who was not otherwise going to be a witness in a
18 hearing. And as an advocate for the districts it would be
19 our job to advise the district that that wasn't required
20 under the law.

21 So I just want to caution people to think about
22 that. What the law requires and what OAH's authority would
23 be and what the other side of the table -- the district side
24 would have to do in order to do its job and to protect the
25 district. Thank you.

26 MS. VANAMAN: Do you think it's okay --

1 CHAIR STEEL: Yeah, I --

2 MS. VANAMAN: -- for the District to hide out one
3 of its people? Make it impossible to serve that person? Do
4 you think OAH might want to hear the testimony about how we
5 tried to get this person here -- we did everything we could
6 to serve the person and the District made it impossible for
7 us to do so? Do you think that's okay?

8 MS. TAYLOR: I think that's what the subpoena
9 process is for. Not for hiding out or avoiding service
10 certainly but for -- that's what the subpoena process is for.

11 MS. VANAMAN: But let's deal with the reality here,
12 okay? Let's take the unrepresented parent who has no access,
13 no money, no ability to hire anybody to find out what the
14 home address of the individual is. They get their subpoena.
15 It's properly issued. They do it right. They go to the
16 school to try and serve it and they're told you may not serve
17 subpoenas on our school building. You make sure that the --
18 in fact the employee comes and leaves by a different door
19 than what they usually do so they're not accessible to get
20 served. And everything possible is done to keep that
21 subpoena from being served. Is it your statement that that's
22 okay? That kind of gamesmanship is okay on the part of a
23 District and OAH should not be able to take note of that in a
24 hearing decision or in any orders that it makes?

25 MS. TAYLOR: On the contrary. What I said was that
26 service should not be avoided.

1 MS. VANAMAN: Pardon?

2 MS. TAYLOR: And what you're suggesting is that
3 service would be avoided.

4 MS. VANAMAN: I'm sorry, I didn't hear you.

5 MS. TAYLOR: On the contrary. What I said was that
6 service should not be avoided. And what you're suggesting is
7 that service would be avoided.

8 CHAIR STEEL: I want to go one step further which
9 is that, you know, if you're in a hearing -- for it to be a
10 fair administrative hearing which is an informal process for
11 parents -- if you have a District that -- you have a parent
12 who needs that resource specialist teacher present to prove
13 her case. And that person really needs to be there to prove
14 her case then I believe that it should be -- every effort
15 should be made to make sure that person -- that means both
16 sides because then it's not a fair or just hearing. Because
17 the parent didn't have the right subpoena process -- because
18 she didn't have the money to hire -- that doesn't seem fair.

19 And that's why -- I mean I understand that there is
20 a subpoena process but what's the goal of an administrative
21 hearing? What's the goal of Special Ed hearings? That's the
22 goal. Not to defend, you know, the subpoena process. It's
23 to get the answers to what's going to make this education
24 program best. So if it requires the District to just pick up
25 the phone and get that teacher present -- even if it's at the
26 last minute -- even if it means OAH ordering -- then that's

1 what's necessary. I don't think there's some mystery here.
2 I mean I don't understand. That's why it's like it doesn't
3 seem to be that it should be dependent on if they have the
4 savviness to find that teacher. I think that what we want
5 are fair hearings and that's the way to get a fair hearing.

6 MS. TAYLOR: My statement went to the process that
7 is in place and to district authority and to OAH authority
8 and so there are ways to change the law so that OAH doesn't
9 have to exceed its jurisdiction and the district doesn't have
10 to exceed its authority.

11 CHAIR STEEL: OAH can absolutely order a witness
12 present if it's necessary -- if they're necessary without a
13 subpoena.

14 MS. SMITH: I have a question about that because
15 this comes up periodically in the summertime. And we don't
16 have the authority -- school districts -- to order someone to
17 show up if they're not on contract. So the only way that we
18 can make them come is to subpoena them.

19 CHAIR STEEL: Any other comments?

20 MS. TOTH: My name is Jessica Toth. I'm a parent
21 attorney and just very quickly I wanted to share what was
22 sort of a disappointing moment for me.

23 A month or so ago I had a pre-hearing conference
24 and a week prior I had submitted a written request to the
25 District simply for the full names of certain individuals
26 that I knew I would need to appear as witnesses. I was able

1 to describe the person by first name and by their role in the
2 student's education but I wasn't able to obtain the last
3 names.

4 A week later when the pre-hearing conference came
5 around I had not received any response from the District and
6 so the issue came up in our telephone call. And I was
7 disappointed to learn that the ALJ assigned to our pre-
8 hearing conference was not willing to insist at that moment
9 that the District produce the names. I wasn't asking for
10 them to make the witnesses available. I really just needed
11 the names. And the response that I received from OAH was
12 'School district, when do you think you might be able to
13 produce that information?' And I knew and the other attorney
14 on the case knew and that person is present in the room today
15 so I welcome any response that they would like to offer. We
16 both knew that they had those names and they could have right
17 then and there in the phone call fixed the problem and been
18 efficient and gotten everything taken care of. And that's
19 not what happened. And there was no move by the ALJ to make
20 it happen. So everything worked out but it was disappointing
21 and I don't think it was necessary for things to go that way.

22 CHAIR STEEL: I've -- I have three comments on --
23 from the web.

24 "I really support the record request by Ms.
25 Vanaman. This could possibly resolve some of the issues that
26 the IEP or even mediation level record request for service

1 logs or any info on the student that helps in determining
2 placement and services issues. The district is in control
3 and this is hard for parents. Parents are having to go on to
4 due process just to get records. This is unacceptable."

5 Second comment: "Providing the evidence packet is
6 great but producing these documents just before hearing when
7 the request was made months earlier isn't fair."

8 There's a third comment: "If Districts do not make
9 witnesses available to unrepresented students because they
10 simply do not have to this discretion is left to the District
11 instead of the disadvantaged student."

12 Okay. So let's go on to the next -- I mean I think
13 we've sort of started to talk about the next question. As
14 Mr. McIver said that there -- "Should there be an etiquette
15 or decorum policy for participants in the process?" So are
16 we -- I mean we've sort of discussed this but is there any
17 other discussion on the etiquette or having a decorum policy
18 or is there any other?

19 MR. MCIVER: Like I said I think the remedy can be
20 addressed through training of hearing officers and mediators.

21 CO-CHAIR READ: I guess I would want to know --
22 does OAH have a civility policy right now?

23 JUDGE LABA: A civility policy for the
24 participants?

25 CO-CHAIR READ: Yes.

26 JUDGE LABA: It might be in the APA but I don't

1 know if that's the exempted portion of the APA from these
2 hearings or not. I'd have to check and see.

3 CO-CHAIR READ: From the Administrative Procedures
4 Act --

5 JUDGE LABA: Right.

6 CO-CHAIR READ: -- which would contain that
7 portion. Because I know civility policies are in -- I
8 wouldn't say policies but are part of local rules in various
9 courts and if that is part of the APA that's adopted by OAH
10 it might be helpful for the public to know about that. If
11 it's not then it may be helpful for OAH to post its
12 expectations or publish them in some manner.

13 CHAIR STEEL: Or include them even in their -- in
14 your notices. We get notices regarding due process. There's
15 nothing wrong with putting the policy as part of that as well
16 as a reminder to all participants that this is the -- you
17 know, if that's the requirement -- I mean one of the
18 suggestions could be that if there is a policy that it's
19 included with every document that you get. If you get a
20 Notice of Hearing it's part of the document as well.

21 Any other comments?

22 CO-CHAIR READ: Are we still on 'should there be an
23 etiquette' --

24 CHAIR STEEL: Yeah.

25 CO-CHAIR READ: Okay.

26 CHAIR STEEL: All right. Any other comments on the

1 etiquette policy? Okay. Moving on to the next question.

2 "What Exhibit tab designations should be the
3 standardized model?"

4 MS. VANAMAN: I ain't using alphabet letters. Take
5 me to court. Sue me. Do whatever. Not that I have an
6 Exhibit that's quadruple W. I'm happy to do S-1, S-2, S-3 to
7 indicate it's a student. But I cannot and will not get into
8 the alphabet game. They are too expensive to produce.
9 They're too difficult to produce. And it's very hard to sit
10 through one of these hearings where they refer to 'would you
11 please look at Exhibit W to the 5th power?'

12 CHAIR STEEL: So is there a recommendation that
13 everybody's --

14 CO-CHAIR READ: I think the recommendation is not
15 to require Valerie Vanaman to use letters.

16 MS. VANAMAN: No, I don't think we should any of us
17 -- you can't -- for the record have you ever tried to read an
18 Administrative Record where they've been -- when the letters
19 have been used? It's really hard. If you can just agree
20 that the District can use its numbers and the student can do
21 it as S-1 and they just get identified that way. The records
22 are clean. I mean I'm litigating in Federal court -- we've
23 been to the Ninth Circuit twice on this Exhibit packet and
24 the District used letters and numbers and we used numbers and
25 there isn't a problem at all in the litigation of that case.
26 The case has been litigated since 2005. It's been seen by

1 six different judges at this point if you count the Federal
2 Appeals Panels and it works fine.

3 CHAIR STEEL: Any comments? Okay.

4 CO-CHAIR READ: Yeah, I would just add that I've
5 never experienced a problem with both parties using numbers
6 or letters or whatever and I also think that especially when
7 cases where the parties are represented by Counsel you try to
8 get a lot of this organized as early as possible and after
9 you've assembled a three-inch exhibit binder to learn
10 subsequently that you need to change all your numbers to
11 letters or vice versa adds unneeded administration so I'm a
12 big advocate of reasonableness.

13 MR. MCIVER: Yeah. I agree. Prior to 2005 we
14 wouldn't have any difficulties with the designation of the
15 exhibits even when there's multiple parties in cases but an
16 inordinate amount of time and energy seems to have gone into
17 the unique OAH systems that are sometimes I think
18 idiosyncratic to the hearing officers if I'm not wrong.

19 CHAIR STEEL: I think we're -- any other comments?
20 I think we're --

21 MS. VANAMAN: I also would just ask that there be
22 consistency in it -- that we just agree upon it in advance.
23 It is nothing like being in the last day of a long hearing
24 and everyone trying to go through and change exhibit tabs and
25 know somebody's making a mistake.

26 CHAIR STEEL: Also too if you have unrepresented

1 parents that they know they're going to use a number to put
2 "S" first. I mean that's -- I mean that's one of the main
3 requirements, too, is that --

4 CO-CHAIR READ: I guess my concern is that you can
5 buy tabs that say 1. They're harder to find that say S-1.
6 So I wouldn't want to put that burden on anyone.

7 CHAIR STEEL: Any other comments on it?

8 MS. VANAMAN: This actually seems to have arisen
9 because of the next bullet item which is related to
10 introduction of evidence in hearing.

11 CHAIR STEEL: Right.

12 MS. VANAMAN: There -- there is a practice that
13 exists in some administrative agencies in which at the
14 beginning of the hearing all of the docs since the rules of
15 evidence don't apply -- the technical rules of evidence don't
16 apply -- the entire -- in fact OAH uses this and for example
17 with Regional Center hearings -- the entire packet from the
18 Regional Center for example is introduced as the Regional
19 Center's Exhibits.

20 At the beginning of the hearing the entire packet
21 from the parent is introduced as the Parents'. If there is
22 objection to certain items in those records those objections
23 are noted at the beginning of the hearing and as you go
24 through the hearing if you try and get it in it's then
25 addressed at that point.

26 It certainly makes -- by my time estimation it cuts

1 out about three to four hours in a lengthy hearing of fights
2 over every document as you get to it. And since I think
3 someone has calculated that it costs the District just in
4 terms of personnel, attorney's fees, and so on an average of
5 about -- what was it -- \$5600 a day to participate in a
6 hearing that that half day is a cost saving to everybody
7 involved.

8 And it seems to me that that's a practice that the
9 Office of Administrative Hearings is certainly used to using
10 with regard to other kinds of adjudicatory matters and I
11 don't know why it would be different in this system unless it
12 was a heavily contested case as to each particular document.
13 To have to go through laying foundation and going through a
14 formal introduction of documents as to which is really no
15 question in which they're going to come in anyway doesn't
16 seem to make a lot of sense and it could be dealt with easily
17 at the beginning of the hearing.

18 CHAIR STEEL: Valerie was saying about the next
19 question which is I think that it's whether, you know,
20 regarding -- and I'm just going to read it out so we can keep
21 the discussion going concerning how evidence is produced. It
22 is believed that ALJ determines the process for introducing.
23 It can be confusing and extend the length of the due process
24 hearing needlessly. A substantial amount of time is spent by
25 the parties determining which evidence has or has not been
26 produced and so whether it should be some standard process.

1 So I'd like some -- Maureen?

2 MS. GRAVES: My name is Maureen Graves. I'm a
3 lawyer for students and parents. I strongly agree with
4 Valerie that the practice of letting binders in except for
5 specific documents to which there was objection made a great
6 deal more sense. I've had hearings now where we argue about
7 specific emails. I've had judges complain about the
8 tediousness and the order and time consumingness of
9 presentation of evidence but at the same time I'm told that I
10 better get each of these documents in if I want to have any
11 hope of referring to them in the record. I've had partial
12 chains of email introduced, IEP addenda omitted -- perhaps
13 it's my human imperfection but I think that we're just
14 placing a very high premium on gamesmanship in this process
15 as it stands now.

16 And I also think that it would be helpful for
17 judges to be able to focus on what people are saying rather
18 than on whether evidence -- documents that have been
19 discussed have actually been admitted into evidence and, you
20 know, with all of this and the reality in which I practice
21 many clients don't have any money. They're extremely
22 emotional by the time they've gotten to a hearing. Some --
23 those who have money have typically spent a lot of it on
24 services as well as on legal issues and, you know, the idea
25 of 'well, if you have a lawyer just subpoena them' -- right.
26 Just figure out when the speech therapist is at this school.

1 Just figure out whether she's going to be at an IEP meeting
2 or something else that day. You know each of these things
3 sounds little in isolation but they add up to an extreme
4 burden and an extreme impediment to fact finding.

5 And I didn't get up to say I am against civility
6 but I really do find it kind of offensive to go into IEP
7 meetings and have parents told that they're supposed to be
8 calm and not interrupt. I think, you know, everybody knows
9 people do their best in these proceedings. One side tends to
10 be very emotional and the other side I think is equally
11 emotional but much better at hiding it and I think that to be
12 focusing on how people are supposed to be acting rather than
13 handling the human interactions as they arise is probably a
14 mistake.

15 MS. VANAMAN: You know, in the present system -- if
16 we're going to have to go through introducing each piece of
17 evidence and taking up a day of hearing -- the equivalency of
18 a day of hearing to do that what you do is you increase the
19 probability of appeal. And a good judicial system at the end
20 of the day is measured by how few appeals are generated.

21 If you are running a judicial system that is
22 effective, reasonably fair and doing 'justice' around for
23 everyone concerned you will in fact have relatively few
24 appeals. Because the procedure that's used, the way things
25 are done, the kinds of decisions that are written really
26 don't allow much room for appeal. And when you introduce a

1 system in which there is a refusal to accept at the beginning
2 of the hearing blocks of evidence or books of evidence then
3 you run the risk of increasing appealable issues. And I
4 don't understand it given that the technical rules of
5 evidence don't even apply why we're into this situation.
6 Maybe I'm missing something.

7 MR. MCIVER: I agree with the comments so far, too.
8 I didn't see a problem in the prior administration of
9 admitting the entire evidence packet from all parties into
10 the case and I have found an inordinate amount of time as you
11 say debating the merits of -- or the admission of individual
12 pieces of paper -- even partial documents during these
13 current proceedings. And it only adds to the length and
14 ultimate cost of the proceedings.

15 CHAIR STEEL: Yeah. I think we're around the same
16 -- and also, too, it's not consistent. I mean we have some
17 hearing officers that allow the whole evidence in and then
18 the next one will fight every document. So I mean I -- or so
19 it's not consistent. I mean I think it's -- you know, again
20 we go back to what do we want to have as a fair and be able
21 to have all the evidence come in and it should be -- I mean
22 it was just having the evidence packets and debate which ones
23 are disputed. I mean it appears to be the most reasonable
24 and effective. But I think --

25 CO-CHAIR READ: I guess I'm not quite understanding
26 the specific discussion that's going on. Are we talking

1 about just introducing evidence packets and admitting
2 evidence as it comes up in determining whether or not to
3 admit it at that time or is the suggestion just to admit
4 entire binders of evidence without question -- without any
5 requirement as to foundation?

6 MS. VANAMAN: Jonathan, you're aware that up until
7 2005 what happened in these administrative hearings was you
8 would have Exhibits 1 through 100. I would have Exhibits 1
9 through 100. At the beginning of the hearing the hearing
10 officer would say 'I'm going to admit all of these subject to
11 any objections you had.' If I had an objection to something
12 you have I'd say 'I don't have any objections to 1 through 80
13 of his. I do object to items dah-dah-dah.' The hearing
14 officer would in fact not allow those in. The rest would
15 come in and then we would be done with it. We wouldn't go
16 through this evidentiary prove-up on --

17 CO-CHAIR READ: Right.

18 MS. VANAMAN: -- each of these pieces of evidence.

19 CO-CHAIR READ: But I understand that. But I'm
20 understanding some of the comments being that the judges
21 should simply admit the entire binders without any
22 opportunity for question without -- as to relevance.

23 MR. MCIVER: No. No.

24 MS. VANAMAN: I don't think anybody --

25 MR. MCIVER: No. I think the system Valerie
26 described would be appropriate. That if your objections to

1 specific documents that should be stated at the very outset
2 but otherwise the entire packet should be entered.

3 CHAIR STEEL: Because the objections are what the
4 discussion is. If there's no objection to the admission of a
5 portion of the binder then you're just arguing over the
6 objections of the specific evidence.

7 CO-CHAIR READ: Right.

8 MS. SMITH: I just would have one concern. It has
9 occurred where we don't get the other side's binder in a
10 timely manner and we still go forward with the hearing and if
11 it's a huge binder of documents there needs to be time for
12 the attorneys to pore over it prior to the hearing if they're
13 going to accept all those documents at the hearing unless
14 they can, you know, lay a foundation for not accepting some
15 of them. And I know that that's not supposed to occur but it
16 does.

17 CHAIR STEEL: Is that more than five days? I mean
18 -- are you saying it's less than five days?

19 MS. SMITH: I've seen -- we have had it occur where
20 it was allowed that the evidence came in between zero and
21 five days -- less than five days and that's impossible to
22 deal with.

23 MS. VANAMAN: And that packet of information
24 contained information -- masses amounts of information was
25 unknown to the District prior to that time?

26 MS. SMITH: Well, the problem is you wouldn't know

1 until you looked through all of it. Because there can be,
2 say, a letter from some outside third party that you haven't
3 seen, that you don't know, that you do want to deal with and
4 unless you have time to go through it you're not going to see
5 it. So, you know, I think it makes complete sense to me what
6 you're saying, Valerie, about streamlining this but I am
7 concerned that that would have to go hand in hand with a
8 five-day rule.

9 MS. VANAMAN: But my experience is that experienced
10 attorneys in this area who are prepared to go to hearing in a
11 case can take a batch of records and in about an hour and a
12 half -- unless it's one of these people who files, you know,
13 1500 pages at the last minute -- but in a reasonable set of
14 documents can go through them and see -- and figure out what
15 they are pretty quickly.

16 MS. SMITH: Well, I'm picturing in my mind a very
17 unreasonable situation.

18 CHAIR STEEL: Before we go forward we have two new
19 members that are on the committee that we need to introduce.
20 So Steven Wyner --

21 MR. WYNER: Steven Wyner, Wyner & Tiffany.

22 CHAIR STEEL: So further discussion on this -- let
23 me go back. Let me for the -- do we want to re-read the
24 question? Or move on? Where are we at with the
25 introduction? Do we have a recommendation?

26 CO-CHAIR READ: Yeah. Well, I guess the proposed

1 recommendation on the draft that's been sent out says "OAH
2 should have a standard process for introducing evidence. It
3 was suggested that OAH accept into evidence all evidence that
4 is presented by the parties without the formality of having
5 to lay a foundation for each document and then requesting
6 that it be introduced."

7 And what I'm hearing subject to anyone's
8 corrections is that the parties are requesting a standard
9 process for the introduction of evidence. No one is saying
10 that parties would not have the opportunity to object to
11 evidence but there seems to be a lot -- and maybe an
12 inordinate amount of administration of evidence at due
13 process hearings that doesn't need to occur.

14 MS. VANAMAN: I actually have a transcript from a
15 court reporter from an Administrative Hearing where the
16 district in that particular case who is represented by an
17 attorney not admitted to practice in the State of California
18 puts in about 2,000 pages of evidence. And there is a very
19 good colloquy that takes place in that transcript with the
20 hearing officer in that matter who happened to be the
21 presiding hearing officer at SEHO at the time, Gwen Faye, and
22 the attorneys -- and it's a really good teaching tool in
23 terms of how one goes through doing -- dealing with the
24 admission of the documents - the ones that weren't and how
25 the objections are preserved. And I'm happy since it's part
26 of the public record of a Federal court matter to make that

1 available should anyone want to see how that is done in what
2 appears to be a very constructive way. It has withstood
3 challenge before the Federal District Court and before the
4 Ninth Circuit and it is an effective way to proceed. And if
5 this could be amended to do that and to allow that kind of
6 procedure it would be great.

7 MR. WYNER: Sorry for joining late and missing most
8 of the comments and maybe somebody has suggested this. But
9 my hearings tend to have hundreds of exhibits and thousands
10 of pages of documents that are copied and one thing that
11 we've tried to do recently is try to exchange exhibit lists
12 early on with the school district because there is -- we
13 don't see the point to both sides submitting into evidence
14 IEP's that are purportedly the same date, assessments that
15 are supposedly the same -- I mean there may be differences.
16 Someone may have a page that's different than someone else's
17 but if you could at least identify the common documents. I
18 mean a kid's school grades are the kid's school grades. How
19 many transcripts do you need? How many IEP's by the same
20 person need to be put in?

21 Sometimes we find that the other side doesn't
22 always put their evidence together very well and there will
23 be pages missing. So if there's some sort of procedure set
24 up early on that these are at least the school records that
25 we all agree upon. After that you're really arguing about
26 whether correspondence should come in, whether particular

1 work samples should come in, whether you have legal research
2 or articles -- you might have Board policies. That would be
3 another thing people could stipulate about -- Board policies,
4 administrative regulations, special education fact sheets and
5 procedures.

6 The fact of the matter is, you know, if you get --
7 you need to treat this -- if you're going to really go to
8 hearing you need to treat it as though you're in litigation
9 and you need to prepare for it. And the notion that you can,
10 you know, simply a week before your papers are due you sit
11 down and simply -- 'well, we'll just throw all of this in
12 without even looking at it' doesn't really make any sense.
13 You need to consider the evidence that you're submitting,
14 what the issues are, what you're trying to prove and so I
15 would suggest a procedure for at least preliminarily
16 exchanging exhibits as they relate to a student's education
17 records that supposedly are in the possession of both the
18 parent and the student. And that would be one big
19 streamlined index binder that would be submitted before.

20 CHAIR STEEL: Our only -- what we -- we have a
21 couple of answers. Our only -- we have some struggle with
22 the community we serve of getting records and so what that --
23 for us there would have to be some -- something in place to
24 ensure that there was a fair exchange of records because one
25 of the problems we have is that families are unrepresented
26 that would mean that both sides actually start with the same

1 documents and so that -- that's one of the concerns that we
2 face which is that there is sometimes an uneven playing
3 field. That parents don't have the documents and so as a --
4 and that's just a common struggle that we have and so there
5 may be -- that's assuming that the documents have been
6 exchanged.

7 MS. VANAMAN: There's also a difference in the
8 economics of practice and I respectfully disagree with Mr.
9 Wyner on that point. Practices are very different on how
10 they approach. I economically could not afford to do that.
11 I couldn't afford the time that would be involved in trying
12 to work with opposing counsel to do that. I need to be able
13 to put the evidence packet together, have it done -- I just
14 don't have the economic background support to be able to do
15 that. So it's nice if we all could do that but I don't think
16 we can and certainly unrepresented parents can't. I would
17 hate to see OAH impose yet another layer of involvement that
18 requires staff time and that's what that of course would be.
19 And some of us just can't afford it.

20 FEMALE: While I understand and agree in theory
21 with what Steven is saying my other concern though is that
22 this is -- while it is litigation but bottom line these are
23 parents. And parents are not litigators they're parents.
24 And so there has to be a system in place that is equally as
25 friendly to parents so that they understand how do I submit
26 this document? You know, do I need to lay a foundation for

1 it? Do parents even know what foundation is for a document?
2 And the reality is oftentimes is that parents will know a
3 document exists but getting their hands on it from a school
4 district is a completely separate issue and so oftentimes
5 they're saying 'well, I know this document's here -- it
6 exists and I'm having to file a State complaint in order
7 simply to get access to the document that I know exists
8 because the District won't hand it over.'

9 CHAIR STEEL: I have a comment from the net.

10 "How on earth is unrepresented parents in five days
11 be able to review an entire binder, go to work all day and
12 care for their severely handicapped child? What is the
13 fairness in time?"

14 Thank you. Here's another one. Here's another
15 question -- comment:

16 "This goes back to the document request from
17 parents and school districts not honoring that request. Then
18 the documents show up at hearing. Can OHA aid parents in
19 getting documents in a reasonable amount of time? This is so
20 important to parents. Recently I made a statement to the IEP
21 team and it fell on deaf ears. The school district did not
22 even respond to a request to get the records that were
23 missing."

24 MR. WYNER: You know, some of these --

25 CHAIR STEEL: Maureen, go ahead.

26 MS. GRAVES: I just wanted to strongly agree with

1 Valerie's point that the different firms on the parent and
2 student side have different economic models and I think for
3 many small firms that have relatively large number of cases
4 and are not -- and clients who cannot pay lots of money for
5 paralegal services that would be an impossible burden. It
6 would be substituting lawyer time to meet and confer for
7 clerical time to put documents in order with a lawyer
8 checking that the things that are there that need to be
9 there.

10 I also think that on both sides it's very common to
11 have mistakes in documents and that a merge when you get two
12 documents appearing many, many times when one document turns
13 out not to have the parent comment -- I think trying to catch
14 all of that and putting documents in storage prior to hearing
15 would create a large risk that important information would
16 get lost and that having everything there from both sides
17 increases the messiness but also increases the likelihood
18 that you're going to find out whether that would happen.

19 CHAIR STEEL: Steven, did you have a --

20 MR. WYNER: Well, this issue about not getting
21 records is -- I mean I don't face it. I haven't faced it --
22 where someone was not turning over records. That in and of
23 itself is a violation. Why, you know, why can't -- why
24 aren't people going directly to OAH and complaining? Can't
25 you make a motion to OAH to have the school district produce
26 the records?

1 CHAIR STEEL: Right. But that -- I mean I think
2 that there's an assumption that you're already at OAH. We
3 mean to prepare your case you need to have the documents.

4 MR. WYNER: Yeah, but you can make -- you can make
5 a motion for (inaudible). Why can't you make a motion to
6 compel the production of the child's educational records and
7 seek sanctions if they don't get it?

8 CHAIR STEEL: Does OAH think it has jurisdiction
9 over such a motion?

10 JUDGE LABA: The question would have had
11 jurisdiction over motion to compel production of records from
12 the school district?

13 MR. WYNER: Yeah.

14 JUDGE LABA: It's a joint jurisdiction with CDE.
15 It depends on how it's raised with us.

16 MR. WYNER: So you -- it --

17 CO-CHAIR READ: Because it -- we --

18 MR. WYNER: May I just respond to that? Just --
19 could I ask you one question, Judge Laba? There are these
20 dual tracks of -- you know, you go to the CDE and usually you
21 can win at the CDE on a production of records. It might take
22 60 days but usually you can win that.

23 But OAH -- my understanding is -- and this is not
24 withstanding my son's -- Jonathan Wyner's case -- is that the
25 jurisdiction of OAH is everything that's in IDEA. It's not
26 limited because the California statutes say that it's limited

1 at all. So I think if there's any violation of law we can
2 seek to have that adjudicated before OAH. So if there's a
3 way that you have to proceed to get OAH to do it in front of
4 the CDE I think us knowing what OAH's position on that would
5 be really helpful.

6 JUDGE LABA: This probably isn't the forum because
7 it would depend on the circumstances of the case and how it
8 was raised. Remember we also don't have enforcement power.
9 So we can give you an order telling the school district to do
10 something but we can't enforce that order. CDE would have to
11 enforce that order.

12 MR. WYNER: Right. But we could go a Federal court
13 judge and get him to enforce the order.

14 CHAIR STEEL: What we've seen in the past -- like
15 six months on CDE orders on records has been nothing we've
16 ever seen before. We file hundreds of CDE complaints on --
17 and records is one of the issues that we use to get records
18 usually. You file a State complaint, you're going to get
19 your records usually. Currently we have three out of the
20 last six decisions from CDE on records. Let's say the
21 parents are not -- the parents' attorneys are not entitled to
22 records. They're looking back in 1985 decision and it was
23 overturned in 1997. So there's -- there's a current problem
24 in the investigations at CDE. So I -- which is causing some
25 problem with our families and our community to even obtain
26 records because that used to be the enforcement is you get

1 the order from CDE. So those are currently being looked at.

2 MS. CHANG: Janeen, I want to comment on one thing.
3 As a parent I would like to see the proposed recommendation
4 be enforced just because I want to see it as parent friendly
5 as possible especially for unrepresented or self-representing
6 parents.

7 CO-CHAIR READ: As for the request for records I
8 understood Steve's question to ask really OAH what their
9 position is with regard to whether they can enforce such a
10 motion. I would suggest also that we include that on the
11 agenda for the next meeting when we do have an opportunity to
12 have a CDE representative here. Steve, before you got here
13 there was an issue with regard to the interplay between CDE
14 and OAH and we agreed to table that until we could have a CDE
15 rep here.

16 CHAIR STEEL: I think we need to take -- if it's
17 okay let's take a ten minute -- five minute -- five minute
18 break. So we're going to take a five minute break and come
19 back. Thank you.

20 - - O F F T H E R E C O R D - -

21 CHAIR STEEL: Welcome back. We were on looking at
22 evidence and are there further discussions? Did we kind of
23 verge off into records? And because I think we sort of
24 common sensed that we need records for the evidence so do we
25 want -- are there any more recommendations or any other
26 concerns or thoughts regarding the consistency of evidence

1 production? Or do we want to go to the next? Next one?

2 Okay.

3 The next question is: "What's the process for
4 Subpoena Duces Tecums served well in advance of the hearing
5 since no discovery is permitted?"

6 Is there any questions on the --

7 MR. WYNER: I have some comments on that. Recently
8 we've been -- or one of our clients have been served and
9 their experts have been served with probably eight, nine
10 subpoenas duces tecums and they're served for production at a
11 date that the trial starts or before. Something -- many of
12 these -- and people need to understand -- can constitute
13 consumer records for which a consumer notice under CCP
14 Section 1985.3 has to be served on the consumer before
15 seeking personally identifiable information which are
16 consumer records. And we just filed motions to quash on a
17 number of subpoena duces tecum that are very broad that seek,
18 you know, all information that an expert might have about a
19 student and the expert's a psychotherapist so they're one of
20 the people covered by this and the subpoenas are being served
21 upon the witnesses at the same time as they're being served
22 on my clients which is not -- which is contrary to law so
23 people have to be aware of that -- that, you know, subpoenas
24 have to be served pursuant to the Civil Code especially when
25 they're of consumer records.

26 This question presupposes something. It says,

1 well, there's no discovery. And there is discovery here if
2 we're serving subpoenas duces tecum. Now I'm not quite sure
3 how this should be handled but it seems to me that in order
4 for a parent to go to a hearing they shouldn't have to be
5 forced to have their experts produce at the date of hearing
6 every single document that relates to that student. It seems
7 kind of overbroad and there needs to be a process within
8 which that could be challenged. So, you know, according to
9 the CCP if these were simply business records, subpoenas,
10 they would have to be served 15 days before the date for
11 production. Now that rule only applies to -- if you're
12 asking them to just produce the records. It doesn't apply if
13 you're asking them to appear and produce the records.
14 Apparently if you ask them to appear and produce the records
15 they don't have to give you that much notice. But if they
16 are to be considered -- if the subpoena duces tecums were to
17 be considered to be business records then to the extent that
18 those business records were also consumer records the service
19 on the consumer would have to be 20 days before the date of
20 production. And so I think that at a minimum ought to be the
21 standard that we use.

22 MS. VANAMAN: Did OAH rule on your motion to quash?

23 MR. WYNER: Just filed it yesterday. We did cite --

24 MS. VANAMAN: Will OAH rule on motions to quash?

25 CHAIR STEEL: I see a nod. Yes.

26 MS. VANAMAN: What?

1 CHAIR STEEL: I see a nodding yes.

2 CO-CHAIR READ: Can I try to just really quickly,
3 Steve, translate that into layman's terms because I know a
4 lot of people --

5 MR. WYNER: Please.

6 CO-CHAIR READ: -- who are watching this. So the
7 question has to do with efforts to obtain records. And what
8 you're saying is under CCP which is the California Code of
9 Civil Procedure you're required to provide a Notice to
10 Consumer which means that if you're subpoenaing records of
11 someone who did an independent psychological assessment you'd
12 have to notify the party to the litigation that you're going
13 to issue that subpoena with enough time to give them time to
14 object to it.

15 MR. WYNER: Actually it's only about five days.
16 It's five -- the consumer has to be served with the Consumer
17 Notice and the whole package -- the Subpoena Duces Tecum, the
18 affidavit in support of the Subpoena Duces Tecum which
19 they're supposed to explain why they need these records and
20 couldn't get them otherwise and I guess what they'd be
21 relevant to. So at least five days before the subpoena is
22 actually served on let's say a psychologist or an expert
23 witness, the consumer needs to be served with the Consumer
24 Notice giving the consumer the notice that 'hey, we're about
25 to serve this' and then the consumer could move to quash
26 before it even gets served on the witness. That's the theory

1 behind it.

2 CO-CHAIR READ: And so the consumer is the parent
3 or it could be the district if the parent's issuing the
4 subpoena. And so your suggestion is at minimum follow the
5 rules and the Code of Civil Procedure or define what the
6 procedures are.

7 MR. WYNER: Yeah. I'm concerned about this -- this
8 is pretty technical. I mean I'm concerned about the time of
9 service requirements in those -- in the statute and there's a
10 specified time of service for business records when you're
11 only requesting somebody to produce the records. And that's
12 15 days. But if you're actually requiring them to appear in
13 person and produce records when they appear in person at the
14 hearing it's I believe a reasonable period of time which many
15 people think is the day before the hearing.

16 MS. VANAMAN: Well, the real problem we have in
17 this whole area is that the only regulatory scheme that
18 exists currently in California is in Title V and it's 3082.
19 It gives the authority to OAH to compel the attendance of
20 witnesses and to have the right to issue subpoenas and
21 subpoena ducas tecums upon a showing of reasonable necessity
22 by a party.

23 And what's happening as I understand it is these
24 are just being done willy-nilly without anybody making any
25 effort to show reasonable necessity. It's requiring then all
26 of this filing motions to quash which is now going to happen

1 because again we're back to not having established any
2 standards that are consistent with what would be the general
3 rules of civil procedure which I think one can read into the
4 statutory scheme when it says 'a showing of reasonable
5 necessity by a party' and it is an area that needs to be
6 looked at because it's probably going to create appealable
7 issues if it doesn't get addressed in the systematic way.

8 MR. WYNER: Just to be clear -- I mean, what you
9 just read seems to indicate that OAH would issue a subpoena
10 duces tecum --

11 MS. VANAMAN: Right.

12 MR. WYNER: Well, that's not what's happening.

13 MS. VANAMAN: Correct.

14 MR. WYNER: What's happening is the attorney for
15 the school district is simply signing and issuing a subpoena
16 with an affidavit attached which no judge has ever looked at
17 to see whether, you know, the affidavit actually supports the
18 need for the documents that are being sought.

19 MS. VANAMAN: And I do think the OAH is running --
20 is creating the potential for a P.O. with regard to this
21 issue by the -- there is a difference between the subpoena
22 and them being issued and allowing these subpoena duces tecum
23 to just be issued by anybody who wants to do it. There ought
24 to be -- and it ought to be clear and I think this regulatory
25 scheme requires it as does the Code of Civil Procedure -- an
26 application for it and showing of necessity. Again it's when

1 those rules don't exist that the practice becomes uncivil if
2 you would in that it doesn't follow the Civil Rules of Civil
3 Procedures and so we've got these people out there just
4 serving this stuff willy-nilly and it's a problem.

5 MR. WYNER: Yeah. I had probably myself, an
6 associate and a paralegal have probably spent over 40 hours
7 just dealing with quashing these subpoenas, calling up the
8 expert witnesses, don't panic, don't produce the documents,
9 we're going to move to quash.

10 It's harassing. It's harassing and in my mind, you
11 know, I don't know what the school district attorneys think
12 they're going to do with these documents. They're requiring
13 people to produce documents at the hearing or after the
14 hearing has started. So how are they -- those documents even
15 going to be introduced into the hearing if they had to be
16 served on parties five days before the hearing started. So I
17 don't know how to explain why someone would do that other
18 than to think well, gee, the parents' expert will testify and
19 while they're sitting there the parents' expert will have
20 brought us a stack of paper this high with notes and, you
21 know, hopefully some smoking gun or something that they can
22 pull out and then they're going to say well, we're going to
23 introduce this to impeach you right now. I mean, if that's
24 what due process is about I guess that's what it's about.
25 But --

26 MS. VANAMAN: A reasonable system of justice would

1 it seems to me have a system that goes something like the
2 following. Opposing counsel says and writes a letter to the
3 other side or to the parents saying 'I believe that X issue
4 is involved in this case and I believe there are Y records
5 that are held by Z person. Here is a Release of Information.
6 Please provide them.' Eight out of ten times you may well
7 get that release signed. You'll get it. No big issue.

8 When that doesn't happen then of course they can
9 make an application for their subpoena duces tecum in which
10 they would show a reasonable necessity for it based upon the
11 fact that they followed a request for records procedure and
12 we would then get it.

13 In the absence of a system of justice decision
14 posing that requirement what we have is this piece has now
15 gone crazy and we've got experts all over the place being
16 served willy-nilly with subpoenas that are really not
17 valid -- that you ignore them I guess at your peril or you
18 make formal motions or you do whatever but again it's the
19 absence of having -- you know, here are the rules, guys.
20 You've got to make a reasonable showing. That's got to
21 include one, that you asked for them and were denied them.
22 Two, that there's a basis for them that you think has some
23 relevance to an issue that's going to be presented at the
24 hearing. To allow attorneys to sit down and just run these
25 things off and to start serving them is really harassment of
26 families and it is causing major concerns.

1 MR. WYNER: They also often get served by fax.

2 MS. VANAMAN: Right.

3 MR. WYNER: Which is not a valid way of affecting
4 service in the absence of a written agreement with a -- you
5 know, both sides. So I would say at least 20 days. The
6 question is how soon should this happen? At least 20 days
7 and I'd like -- I'd like the subpoenas to be issued by OAH.
8 I have no problem making an application to OAH for the
9 issuance of a subpoena duces tecum. I don't think attorneys
10 should be free to just, you know, send them out on a moment's
11 notice.

12 MS. VANAMAN: When there's no authority in the
13 statutory scheme for attorneys to send them out on a moment's
14 notice.

15 CHAIR STEEL: I'm going to read from the public.
16 "While I do believe the challenging of school districts under
17 the OAH CDE's refusal to compel a school district to produce
18 records in a Federal court has some benefits with respect to
19 the issue many parents cannot afford to retain law firms or
20 attorneys to take such courses of action to pursue their
21 child's right to FAPE. Many parents given current precedent
22 cannot even afford to pay for expert witnesses to testify
23 during hearings or fees for serving uncooperative witnesses
24 to the level the playing field of due process. An
25 enforcement system in the State whether it be through OAH or
26 CDE needs to be more responsive to parents and ultimately to

1 school districts -- ultimately to schools -- more responsive
2 and ultimately just to -- to the student." I'm sorry.

3 I think -- we're not seeing that but I think that
4 that's because -- I mean one of the issues that we're -- you
5 know, all the families we serve it's a bit low -- families
6 that don't have access to the experts. We're hoping to use
7 the IEE system to be able to obtain those experts so we're
8 actually not seeing this but that's -- you know, what happens
9 in the private sector will ultimately be seen in our sector
10 sooner or later and so if there isn't those rules it actually
11 could be used in a really negative way that will impact the
12 families that we're serving.

13 Keep moving. Any other comments? Okay. I'm going
14 to read the question, the issue and then there is a proposed
15 recommendation just to start the discussion because I have a
16 feeling there'll be some discussion. What NOI standards
17 should be used? It's a Notice of Insufficiency.

18 "The question was raised concerning potential
19 different standards used when rolling on Notice of
20 Insufficiencies. In a student filed case it appears the
21 pleading must include extensive detail outlining the alleged
22 violation and facts. To the contrary, student filed cases
23 appear only to be required statement that a particular IEP is
24 appropriate without giving detailed explanation to why it is
25 appropriate. If it is a change of placement why the change
26 was appropriate."

1 Actually the -- I'm just going to go ahead and read
2 the standard -- the recommendation then get open to
3 discussion.

4 "OAH should use a consistent standard when
5 determining whether a student district filed complaint is
6 sufficient if students are required to provide detailed facts
7 about why violations exist. District should also be required
8 to provide details as to why the proposed IEP is
9 appropriate."

10 MS. VANAMAN: Ruling on NOI's should not be the job
11 of the inexperienced brand new administrative law judge.
12 Rulings on NOI to have consistency and to have the system be
13 a fair system of justice should be done by the most
14 experienced people serving as ALJ's who understand the
15 system, who have had experience in the system and otherwise
16 what we have is a system -- it's not the way to train people
17 to have them ruling on NOI's, because it has led to just mass
18 inconsistencies in the rulings and some rulings that are
19 pretty funny actually if you read them. But if you put them
20 in a little joke book about -- they just -- because they
21 don't make any sense in terms of the kinds of things that are
22 said and it's because the person ruling on it doesn't have
23 any experience. And we're not going to get consistency
24 unless you turn the system around and your most experienced
25 people handle your law and motion and handle the rulings on
26 the NOI's.

1 There does seem to be a dual standard. Districts
2 are filing complaints that simply say -- there will be three
3 lines in their complaint. 'The district offered FAPE with
4 the IEP of X date.' Now three and half, four years ago I sat
5 at a meeting when the then presiding judge of this division
6 lambasted the fact that that was the form of pleadings that
7 were being done and made fun of them. And yet now that's
8 accepted by districts and then if the parents try and do too
9 much because they don't want to get NOI'd they get stuff
10 saying it's too complicated a pleading.

11 You know, that's why you need to have your most
12 experienced people making the rulings so the standard becomes
13 clear and everybody knows what it is.

14 MR. WYNER: I would agree with Valerie's comment
15 that there appears to be two different pleading standards.
16 And there have been times when I have filed an NOI against a
17 school district it has been 'Well, they said they offered
18 FAPE' so they have to prove every element of that, whatever
19 that means. And so you still don't know what case you're
20 defending against. But that seems to be the playing field
21 that you start with.

22 We used to write -- when I first took over we used
23 to write these very detailed complaints. I mean 30, 70 pages
24 wouldn't be unusual. And then we started to see some Federal
25 court rulings that, you know, confirmed this is notice
26 pleading. And so now we write very general broad complaints,

1 you know? We identify a year and we say the kid didn't get
2 the behavioral intervention services that he needed. That's
3 it, you know? We'll say some facts about -- support the fact
4 that they knew he had a need for behavioral services and they
5 didn't provide it. And so we try to make it pretty bare
6 bones at this point.

7 Now I think it's safest to argue your best issues.
8 It's not -- I don't think it's a good idea to do a spaghetti
9 on the wall attack to writing due process complaints. So the
10 issues are usually boiled down to the kid's not making
11 progress, maybe having behavior and social problems so those
12 are the things that, you know, really can be said probably in
13 20 pages. It doesn't have to be said in 40 pages and just be
14 clear on, you know, you want services, you want a different
15 placement, you want behavior, you want specific
16 methodologies, you want different goals and objectives, you
17 want the kid in the general education curriculum -- I mean
18 all you have to say is this is what he needed, they didn't do
19 it and this is what we want.

20 MS. VANAMAN: Yeah, but you will find there are
21 districts that will file NOI's and now Motions to Dismiss
22 with regard to that and depending on which new ALJ is ruling
23 on it you may find yourself, you know, getting some ruling on
24 it. You can't do it with inexperienced people. It's got to
25 be done with experienced people.

26 MR. WYNER: Now I'm curious about the -- maybe we

1 can get some input from OAH on the Motion to Dismiss. I have
2 seen those and mostly I don't understand what it means since
3 there's no statutory authority for that and so they may have
4 just simply moved to strike the motion to dismiss as being
5 without merit.

6 But I think OAH has evolved on how they are ruling
7 on these NOI's and in circumstances that I've had I've found,
8 you know, that they don't want as much detail as was
9 originally being provided back in July or August of 2005.
10 That's at least my experience.

11 Although I do still think that there is a dual --
12 there's a duality. The district doesn't have to say anything
13 other than we're coming to hearing and be there. And we have
14 to tell what it's about. I think the district should be
15 required to say, you know, we had everybody there that needed
16 to be there and prove that and, you know, all the things that
17 they intend to prove so that -- this would be especially true
18 for people who are either unrepresented -- they really need
19 to know. I mean, you know, someone like Valerie and I could
20 figure out what's going on relatively quickly and the other
21 people on the panel can figure out what's going on relatively
22 quickly but if you're not represented and the school says
23 well, we offered FAPE. That really has very little meaning
24 to a parent without counsel.

25 MR. LEVIN: Yeah, thank you. Since I'm not an
26 attorney I need to ask is there a law -- a statute about the

1 number of times somebody can keep filing and if it's ruled on
2 that it's insufficient? Or does it just keep going until
3 it's sufficient?

4 MR. WYNER: No. I guess after a while you could
5 file a writ of mandate, you know? And I think some people
6 have done that. I think there are some. Have you seen that,
7 Valerie? There are some cases where, you know, OAH -- I mean
8 you have to let them rule no, they said you could amend. I
9 had to do it three times once.

10 CHAIR STEEL: And they -- when they can just mess -
11 - I mean we've seen cases where they've Notice of
12 Insufficiency'd basically saying that it wasn't appropriate
13 to even use incorporation by reference like you would in a
14 Federal pleading. They said even though it would be standard
15 in any Federal or State pleading it's not appropriate here.
16 And then luckily OAH didn't buy that but then they bought
17 some other arguments and they order -- which is odd is that
18 we got an order within like one day of the first Notice of
19 Insufficiency that said 'some of the issues they understood,
20 some of them don't' which I don't -- like you said it
21 definitely needs someone who's got some experience of the law
22 that understands how to read and understand what Special Ed
23 law is about and because ours are pretty detailed.

24 We still write pretty long detailed due process
25 requirements that I don't know how -- how you can go to a
26 resolution session and have a discussion and then file a

1 Notice of Insufficiency the next day. I still don't
2 understand that whole process. And then to get a ruling
3 right in the middle --

4 MS. VANAMAN: What's interesting about that of
5 course is the State Bar rule when one should not assert a
6 position one knows not to be true. So I always find it
7 interesting when they've showed up at a resolution session,
8 clearly understood everything and then the next day file a
9 Notice of Insufficiency.

10 CHAIR STEEL: That would be great once, Valerie,
11 but twice for us. So we got the Notice of Insufficiency,
12 amended it, went to another resolution session after the
13 amended complaint -- went to the resolution session that
14 everybody clearly understood the issues to the point --
15 understood. There was no doubt -- another Notice of
16 Insufficiency was filed and we have not gotten a ruling to
17 date. Have we got a ruling? We got a ruling? I don't want
18 to know. But yeah, I mean -- and that's the concern. Right?
19 Because how do you go to two resolution sessions about the
20 same case, right? And then not allow time for us to be heard
21 about, you know, a response and not having the standard and
22 then see the district's filing with very minimal, you know --
23 and it doesn't seem to be that it's any standard. So we can
24 write the exact same pleading --

25 MS. VANAMAN: And get NOI'd.

26 CHAIR STEEL: One will file an NOI. Another one

1 won't. So --

2 MS. VANAMAN: It goes back to the standard. The
3 administration of a fair system of justice relies upon having
4 at the highest level those people most experienced and most
5 knowledgeable sending out the messages to what's acceptable
6 and not acceptable. And the entry position in this system
7 now happens to be NOI's. And when you have people who are
8 not experienced and when you break them in on doing that you
9 turn that system of justice upside down and you allow those
10 who want to play games to in fact engage in the playing of
11 games rather than the administration of justice.

12 CHAIR STEEL: And then we're not even talking about
13 when parents are filing. We've had parents who have come to
14 us that are unrepresented and they've been filed against.
15 Their case has been -- they've been asked to amend. No
16 assistance to help them amend. They come to us after because
17 their case was dismissed. Now the statute is running still.
18 And that -- that, you know -- that becomes truly unfair when
19 you have an unrepresented parent that's getting filed against
20 by an attorney up for an NOI. So I think that there has to
21 be people that are reading these that have an understanding
22 of the process because -- but the rulings are coming out and
23 some of them are not making sense because if you can read it
24 and understand it and if you can come to a meeting and have a
25 discussion you obviously understand the pleading.

26 MR. LEVIN: Where I was going with this -- and it's

1 more from the district's aspect we have an advocate that
2 continually writes extremely poor motions and OAH is
3 continually saying it's insufficient. Now they've rewritten
4 it for this one particular one -- rewrote it four different
5 times. Then we're getting -- then the case is finished and
6 finally accepted and then we're getting the bill for all of
7 these hours that we spent redoing -- redoing the motion
8 because it was insufficient. And I wanted to see if there
9 was anything on the books that state something about that.
10 So the district's -- I mean if they're writing something
11 that's insufficient why are we being billed?

12 MS. VANAMAN: Well, let me play devil's advocate.
13 If you don't want to pay the bill why'd you file a Notice of
14 Insufficiency? If you know what the issue was and you wanted
15 to resolve it with the parents why did you file those Notices
16 of Insufficiency and allow them to run up all those hours?

17 CO-CHAIR READ: Well, I'm not sure I agree with
18 that reasoning because you know, if -- I mean if you were to
19 play it out -- I mean you can bill for whatever you want but
20 -- and in certain situations you're entitled to pay
21 reasonable attorney's fees. So if you were to play it out
22 and it was to go before a court the question would be whether
23 or not time spent on unsuccessful complaints was part of a
24 reasonable attorney's fee.

25 MR. WYNER: The law generally on that is yes if
26 you're successful.

1 MS. VANAMAN: Yes if you're successful ultimately.

2 CO-CHAIR READ: (Inaudible) that I agree with that.

3 MS. VANAMAN: But the issue really is (inaudible).

4 Despite what everybody says in 99.9 per cent of the cases
5 when you get a filing as a school district it doesn't take
6 you very long to figure out what the parent's unhappy about.
7 They may not have put every word in there and every I and
8 every T. But you know, gee, we went to this IEP and the
9 parent asked for X and we didn't give it. We didn't bother
10 to send them notice about that we were required by law that
11 we weren't giving it but gee, maybe that's the problem.

12 Why are we playing this gamesmanship on NOI? I
13 don't understand it. Unless there is -- I mean I really
14 truly don't understand how a district can take the position.
15 There are some cases where undoubtedly you don't know what's
16 being said. In 99 per cent of the cases you know exactly
17 what the parent's complaining about. Why do you go through
18 the NOI process? What's the point?

19 CO-CHAIR READ: Right. And I guess my response to
20 that -- and I agree. I think it's helpful for everyone to
21 have a clear standard about what the expectations are for a
22 complaint. And I might agree that in 99.9 per cent of
23 Valerie Vanaman cases I understand exactly what the specific
24 issue is because you're going to tell me. And it's going to
25 be --

26 MS. VANAMAN: At some cost to you when I ultimately

1 prevail because it takes me forever to write these facacta
2 complaints.

3 CO-CHAIR READ: Okay. But also there are other
4 IEP's that school districts go through where the parents are
5 represented by counsel and are advised not to say a word.
6 Just get through the IEP process. Don't pin yourself down to
7 any specific complaint and if in certain situations the
8 education code would require the district to file for due
9 process over an unsigned IEP other than the fact that the IEP
10 is unsigned and they disputed FAPE how can you define with
11 more specificity than that the nature of the dispute?

12 MR. WYNER: Jonathan, are you asking how can a
13 school district better define the nature of the dispute?

14 CO-CHAIR READ: Sure.

15 MR. WYNER: Well, you would say what the areas of
16 disagreement are. I mean a lot of times when you go to IEP's
17 parents may consent to a portion of an IEP --

18 CO-CHAIR READ: And those situations are easy.

19 MR. WYNER: Okay. So you say there are parents who
20 don't -- who are instructed by their counsel not to talk.

21 CO-CHAIR READ: Yes.

22 MR. WYNER: That could happen. I don't usually
23 tell people that.

24 CO-CHAIR READ: Right. And so I guess -- I mean
25 I'm not aware of the situation where a school district has
26 filed a complaint over FAPE and just said that. FAPE. 2006.

1 MR. WYNER: Every one that I've ever gotten --

2 CHAIR STEEL: Every one that I've ever gotten --

3 MR. WYNER: -- ever gotten. It doesn't identify an
4 area of academics. It doesn't identify the fact that we're
5 giving the behavioral interventions. You know, the most
6 specific school districts get in the due process complaint is
7 'hey, we did an assessment and it's a good assessment and
8 we're not going to pay for the parents' independent
9 educational evaluation so let's have a hearing.' Which
10 always seems a little crazy to me. How is the parent going
11 to prove that he needed independent educational evaluation
12 without it but --

13 CO-CHAIR READ: I guess my question specifically
14 though is in those situations where the school district has
15 no information of the specific nature of the dispute what's
16 the pleading standard that it should be held to? And I'm not
17 suggesting that we try to answer that question right now
18 because I think we can all agree that what we want is a
19 consistent understanding of what the standard is that our
20 complaints should be.

21 MS. VANAMAN: Wouldn't it be the same pleading
22 standard that a parent is held to? That is the child has
23 these unique and individual needs. Those have validly been
24 determined and we offered a program that addresses those
25 unique and individual needs in the following way.

26 CO-CHAIR READ: Right.

1 MS. VANAMAN: That's what you say you -- and that
2 you should have to do. It's not -- there is something wrong
3 with a system in which a district can say 'It was our IEP of
4 October 15, 2008 FAPE for the child.' And they are allowed
5 to do that. I'm not allowed to file something that says 'The
6 IEP of October 15, 2008 was not FAPE for the child.' You'd
7 be on my back with an NOI come fly at that.

8 CO-CHAIR READ: I guess the question is -- and I'll
9 just give a hypothetical example. If you spend a day in an
10 IEP team working on goals and objectives and getting what you
11 think is agreement but there's no consent to the entire IEP
12 when you file for due process --

13 MS. VANAMAN: You have five elements.

14 CO-CHAIR READ: Shouldn't you understand whether or
15 not there's a dispute regarding goals and objectives?

16 MS. VANAMAN: If the parent's refusing --

17 CO-CHAIR READ: If I could just --

18 MS. VANAMAN: -- if you're -- if your
19 hypothetical's correct the parent's refusing to talk to you
20 about any of it why -- then you just -- it's very simple and
21 it's very straightforward. We did an assessment. We
22 identified these unique and individual needs. We developed
23 these goals and objectives and we offered this program which
24 meets these goals and objectives.

25 CO-CHAIR READ: Okay. And so I guess what you're
26 saying is there's only five components of an IEP that can be

1 in dispute and if there is an unsigned IEP as long as it --

2 MR. WYNER: We're not going to stipulate that.

3 We're not stipulating to that.

4 CHAIR STEEL: It's still the same -- it's the same
5 standard. If the parents have to prove what the issues are
6 and understand then what is the issue that the district
7 thinks that are -- they're saying why it's FAPE?

8 CO-CHAIR READ: Right. And I'm not talking about
9 the instances where it's clear what they don't -- what they
10 dispute.

11 CHAIR STEEL: Even if -- but if they're not
12 agreeing -- if the parent hasn't signed they're not agreeing
13 to anything.

14 CO-CHAIR READ: Okay.

15 CHAIR STEEL: So I would expect that it would
16 describe all the issues. I mean again we don't -- I mean we
17 don't see these. We see a few parents that do the district
18 filing against them for -- I mean --

19 CO-CHAIR READ: Right.

20 CHAIR STEEL: -- some things but we're -- sometimes
21 they're -- the standard isn't as clear of what -- the same --
22 what are the elements that they're actually looking at to
23 prove?

24 CO-CHAIR READ: Right. And the Notice of
25 Insufficiency requirement came with IDEA 2004 and I
26 understand the intent was that we don't have three days of

1 due process hearing over issues that aren't really in
2 dispute. And I mean I think we can go back and forth with
3 specific examples but what I'm hearing is that everyone
4 involved would like perhaps more information regarding the
5 specific standard to which parties are held and make sure
6 that that standard is applied consistently across both sides.

7 CHAIR STEEL: Okay. Others?

8 MS. SMITH: In the interest of saying, you know,
9 the districts are not all bad guys. I do want to say that
10 there -- I can see a very simple situation and I know I've
11 been in them. It has to do with the timelines getting kind
12 of compressed. And that you only have 15 days to have your
13 resolution and you get a day that everybody can attend and
14 while you may feel you have an insufficient complaint you do
15 want to make that -- take that chance of giving the parent
16 that opportunity to see if there is something you can work
17 out. It doesn't change the fact that the complaint might have
18 something to do with something that isn't even covered by
19 IDEA. You know? So, you know, it could occur that you would
20 have a meeting under resolution under -- in good will trying
21 to work it out while you still feel that not only is the
22 complaint insufficient, the complaint's about something that
23 isn't part of the student's Free and Appropriate Public
24 Education. So I don't think that it necessarily would occur
25 because there's bad will on somebody's part.

26 CHAIR STEEL: The issue though of a resolution

1 session is discussed to resolve what's in the complaint.
2 That's the statutory requirement. So --

3 MS. SMITH: Right but --

4 CHAIR STEEL: I have not had resolution sessions
5 that we weren't -- I mean sometimes not all the parties are
6 there but that's a whole other issue. Regarding resolution
7 sessions but the specifics that we're talking about is that
8 everybody knows and if there's any concern about what's in
9 the complaint it gets clarified there.

10 So it is -- it is problematic that if there is any
11 clarity that's necessary that's in the complaint that's been
12 filed that's been cleared up at the resolution session to
13 come back the next day and file -- that -- you know, I don't
14 understand. Because also, too -- let's talk about cost.
15 Right? Everybody talks about cost. We've spent -- parent
16 attorneys go to the resolution session. We spend six hours
17 or however long -- four to six hours in a resolution session
18 -- usually not that long -- but then you come back and you
19 get a 10-page Notice of Insufficiency. So that means the
20 attorney for the district has spent six hours -- they've
21 gotten paid. They've also penned a ten-page note -- Notice
22 of Insufficiency -- they're paid again for those. They're
23 not writing that in a vacuum.

24 I'm sorry that just doesn't seem efficient.
25 Especially for, you know, any kind of process that makes any
26 kind of sense. I mean that's what -- I mean that's what

1 we're facing. I mean and so -- I mean and we go to
2 resolution sessions. I mean we don't waive them. And we go.
3 And so I mean that's what doesn't make any sense. I mean if
4 you don't go and you waive them and then you don't understand
5 it that's different than what we're experiencing.

6 MS. SMITH: And I just -- and it is different in
7 the following sense. This all started with parents who were
8 unrepresented, you know, as particularly -- and you can have
9 an unrepresented parent who files for due process on some --
10 I'm just going to give you a wildly inappropriate but, you
11 know -- because a student didn't make the football team or
12 something that's completely really not part of FAPE. We
13 could have resolution meeting with him and have no attorneys
14 present and we could also file the Notice of Insufficiency
15 without an attorney because we feel the whole thing doesn't
16 have to do with FAPE but you can just because of timelines
17 and workload have one precede the other but the resolution
18 meeting may be a real good faith effort to try and explain to
19 the person involved that you don't even think this is an
20 issue that's covered under IDEA. So I just -- you know,
21 there are situations where that would occur and everyone is
22 operating in good faith.

23 CHAIR STEEL: And that -- you know what? That's a
24 great point because if you go to a resolution session and you
25 identify problems with them -- and I think if we're trying to
26 make this a fair system -- if you go to resolution session

1 and you know there's something wrong with the complaint I
2 don't see any reason why you can't discuss that issue right
3 there and allow the amendment of the complaint without filing
4 a Notice of Insufficiency. That's -- right?

5 That doesn't make sense. It doesn't make sense to
6 have everybody at the table and turn around and do that. If
7 you're at the table and you know there's a deficiency in the
8 complaint resolve it right then and there. Right? Allow the
9 amendment of the complaint by all parties and agree to a
10 complaint and maybe OAH can put that in the resolution
11 session so maybe add another bullet to the bullets the
12 district say that says 'hey, have the parties agreed?' That
13 would save everybody, you know? And it's just one done.

14 MR. WYNER: I agree. That would be a very good
15 thing to do at a resolution session but I -- were you saying
16 that, you know, if the kid wanted to play football that
17 wouldn't be covered by IDEA?

18 MS. SMITH: I'm trying to come up with a good
19 example without violating something.

20 MR. WYNER: I've represented some kids --

21 JUDGE LABA: And that probably wasn't a good
22 example but let's just argue -- I'm not an attorney but there
23 are some things that when we get the complaint --
24 particularly from unrepresented parents -- maybe one or two
25 sentences -- we don't even think it's something that falls
26 under the Free and Appropriate Public Education. We meet

1 with them to try to tell them that prior to filing it just to
2 try to work it out. Sometimes they don't agree with us.

3 MR. WYNER: I'm sure there could be some way out
4 things that they ask for but football is as American as apple
5 pie.

6 CO-CHAIR READ: Maureen.

7 MS. GRAVES: I guess this -- if there's going to be
8 a leveling of the standards for parent and district
9 complaints I'd much rather it -- see it be a leveling down
10 than a leveling up of the requirements. You know, I think
11 sometimes districts file for a hearing because they genuinely
12 want to fulfill their legal requirements. I think sometimes
13 it might be districts billing hours. I'm on a case now where
14 I got a nice detailed complaint by a district where probably
15 the billed eight or ten hours for restating the IEP. I don't
16 think that really does any good. I think if anything they're
17 going to clean it up in their process of restating it. So I
18 think when you get a vague complaint then you have strategic
19 issues of how you want to respond and whether you want to
20 provoke improvements in the faith offer but I really don't
21 thing we want to be pushing districts to have their lawyers
22 spend more time and waste more taxpayer money writing
23 complaints.

24 CHAIR STEEL: We have ten minutes until lunch so --
25 I got the warning. I have a comment from the web.

26 "As an unrepresented parent I received two Notice

1 of Insufficiency's before I received a hearing date. The
2 complaints were exactly the same with the exception of me
3 putting in question form for the third time which -- for the
4 third time. Why wasn't I told to put it in question form to
5 begin with? Were they simply hoping they would wear me down
6 to the point of walking away and giving up on my student's
7 rights?"

8 MR. WYNER: Yes. Could be. You know?

9 MS. VANAMAN: Are your complaints in question form?
10 I thought that we were told when we started in July of '05
11 not to put them in question form.

12 CHAIR STEEL: That's right. I -- mine are --

13 MR. WYNER: Mine are in allegation form.

14 MS. VANAMAN: Yes.

15 CHAIR STEEL: Mine, too.

16 MR. WYNER: Yeah.

17 CHAIR STEEL: They're statements.

18 MR. WYNER: Uh-huh. And, you know, that's
19 something that might be helpful in terms of developing a bank
20 of allegations. Because as I was saying before when, you
21 know, you take a big picture look at what you're talking
22 about you're talking about -- you know, do we agree on the
23 present levels of performance? Do we agree on the goals and
24 objectives? Do we agree on the services? Placement?
25 Accommodations? And those are pretty broad stroke things
26 that you ought to be able to write as standard allegation

1 form. So maybe that's something the committee could put on
2 the agenda for next time to discuss forming a committee to --

3 CHAIR STEEL: Other comments? Questions? Okay.
4 So we're going to go on to one more before lunch which is
5 "Why should -- who should be served in a district-filed
6 complaint? Student or attorney?" I think that's Steve.

7 MR. WYNER: It is mine. It seems so legalese
8 though.

9 CHAIR STEEL: Do you want --

10 MR. WYNER: Could I just say this in English?
11 Instead of reading it?

12 CO-CHAIR READ: Please.

13 MR. WYNER: Okay.

14 CHAIR STEEL: That would be great.

15 MR. WYNER: So this actually arose because it
16 happened to me that, you know, a school district knew that I
17 represented somebody but I hadn't formally represented them
18 in connection with a pending due process proceeding. So
19 rather than serve the parents which is required by the
20 statute, they just served me. And so I moved to quash and
21 dismiss because I'm -- I hadn't, you know, made -- entered a
22 Notice of Representation and I'm not a party. The fact that
23 I represent somebody doesn't mean that I'm willing to accept
24 service for that parent. So -- and mostly, you know, once
25 the complaint is filed and accepted by OAH and given a case
26 number then a whole bunch of deadlines start to click. And

1 so I wanted -- I didn't want those deadlines to move forward.

2 So this proposal is just that if OAH -- that OAH
3 should check a due process complaint filed by the school
4 district and look to see that that complaint has been filed
5 upon the student's parents. I would assume as brief as the
6 due process complaints are that districts file -- they do
7 identify the name of the student and his parents and give his
8 date of birth and his address. So, you know, that should be
9 on the proof of service and if OAH gets a due process
10 complaint that doesn't have a proof of service showing
11 service was affected on the parent then they should simply
12 refuse to even give the filing a case number. And they
13 should get a stamp that says insufficient and send it back to
14 the school district with instruction to affect proper
15 service. Indeed nothing should be served on any attorney who
16 hasn't yet filed a formal Notice of Representation in a
17 particular case.

18 MS. VANAMAN: And more importantly it's really
19 important that OAH have whoever's doing this -- that they
20 look at those complaints to see if they've been served. I
21 haven't had it in the last six months but prior to the last
22 six months I had at least two situations in which the first
23 time the parents knew that the district had filed against
24 them is when they got the notice from OAH of a hearing date.
25 They literally had not been served with a complaint yet OAH
26 had processed it without even looking to see if there was a

1 proof of service on it.

2 MS. SMITH: And we've had exactly two where we --
3 our first notice was when we got the information from OAH.

4 MR. WYNER: By the way in that case what happened
5 was the case didn't get dismissed. And maybe for, you know,
6 just judicial economy maybe what OAH did may make more sense
7 than what I was proposing -- was they had already opened the
8 case whether it was a mistake or not. But they had a case
9 number obviously some clerical effort had to go into doing
10 all that. So they left the case open and they sent an order
11 directing the school district's attorney to actually serve
12 the parents and re-started all the timelines. So either of
13 those would be acceptable solutions.

14 MS. VANAMAN: But the practice would stop across
15 the board if the judicial system that was implemented was one
16 that on item number one for whatever clerk is processing it
17 says 'is there a proof of service attached?' and if there's
18 not then it gets sent back as Steve says with a rejected
19 note. No proof of service. It would stop this. It really
20 would.

21 CHAIR STEEL: Can I add one thing to that is while
22 they're looking at the proof of service to actually -- if the
23 -- if it's a district filing against a parent whose language
24 is other than English that it's served in the language that
25 the family speaks and reads. Because we have had filings
26 against parents and they've brought it to us and they don't

1 even know what's in the filing. And the hearing's set.
2 Because it's a district filing the hearing's expedited.

3 CO-CHAIR READ: Is -- are all filings currently
4 required to have a proof of service?

5 MR. WYNER: To my knowledge.

6 CO-CHAIR READ: Because I'm just imagining a
7 situation where an unrepresented parent doesn't know what a
8 proof of service is and simply faxes a complaint to OAH.

9 MS. VANAMAN: Actually the OAH website on that is
10 really good. I mean it lays out and says you much attach to
11 this something that says this has been done. It's really
12 quite -- that's a very effective notice that they have in
13 there.

14 FEMALE: But I've had that situation that Jonathan
15 just said that I had an unrepresented parent file a due
16 process hearing -- no proof of service -- stated she had
17 allegedly served someone in the district who never was found.
18 And that was a hearing that went forward that I was supposed
19 to be in yesterday that I didn't know about until about five
20 days beforehand through word of mouth. So there is no
21 process for info for parents on that either.

22 CO-CHAIR READ: Right.

23 MR. WYNER: Yeah, that should be a mutual process.
24 I mean it's either got it or it don't -- it doesn't.

25 MS. VANAMAN: Well, if you want something --

26 MR. WYNER: You send it back to the parent and say

1 you've got to serve this on the school. Here's how you do
2 it. Send it to the superintendent of your school district.

3 CHAIR STEEL: And then that would be the same
4 process for OAH to call them and say you need to serve them.

5 CO-CHAIR READ: And so you -- as per your initial
6 request, Steve, it was that since nobody can logically file a
7 Notice of Representation before somebody files a complaint
8 all complaints should be served on the primary parties --

9 MR. WYNER: Right.

10 CO-CHAIR READ: -- rather than the representation.

11 MR. WYNER: Right. And what happened in the case
12 that I was involved in is then OAH went and served the due
13 process complaint on the parent along with, you know, the
14 mediation -- the notice of the mediation and due process
15 hearing dates and sent me a copy.

16 So, you know, you can't have OAH -- I mean OAH was
17 doing what it does in accordance with its normal procedures
18 which is to give parents notice of when a hearing is going to
19 happen. I don't have a problem with that. But that can't be
20 deemed to affect service on behalf of the school district
21 either.

22 CO-CHAIR READ: Yeah. And I mean if that's the
23 process and everyone knows that's the process and it's
24 public, you know, I don't see any problem with that. I would
25 just want to make sure that everyone knows that that's what
26 the rule is because I can imagine quite a few attorneys -- if

1 I sent a complaint directly to the parent that I would get a
2 call immediately at loud volume.

3 MR. WYNER: Yeah. Well, that's your statutory
4 duties. They can complain. They just don't understand the
5 law.

6 CO-CHAIR READ: I'll refer those calls to you,
7 Steve.

8 CHAIR STEEL: Okay. Any other comments? We're
9 going to wrap for lunch and be back at 1:00. So thank you.

10 - - O F F T H E R E C O R D - -

11 CO-CHAIR READ: Okay. All right. We're going to
12 go ahead and start again. A few housekeeping items, though.
13 I just want to remind everyone. We've had people come up to
14 the podium and give comment and I just wanted to encourage
15 that. This is not to -- intended to watch a debate up here
16 by the Advisory Panel. So if you have anything to say feel
17 free to come on up. The second item is Judge Laba provided
18 us with a draft of a Parent Handbook and we got a few
19 suggestions since we just received that that perhaps we would
20 table that discussion till the next meeting. So we could
21 have time to review it and provide some comment to it.

22 JUDGE LABA: Yes. Absolutely. And in fact on the
23 handout that we provided is a cover letter. There are three
24 ways to provide comments to us -- either by email, by mail or
25 by facsimile. Please send us everything you can by December
26 1st. We will incorporate everything and then submit a new

1 draft for consideration. So you need to have as much
2 opportunity as you can to take your time. Go through it.

3 Please remember this is meant for the average every
4 day person to pick up and understand what steps they are
5 supposed to take so we -- this is our first draft. It was
6 written by lawyers so there may be a lot of legalese in there
7 that we need to tone down and explain terms, you know? Any
8 suggestions you have.

9 What is not included in the draft you have is the
10 appendix which actually has the forms and some sample forms
11 and things like that. But in order to keep the use of paper
12 down a bit I just didn't include them in this draft but next
13 draft we will have the glossary of terms, the forms,
14 etcetera, so you can see a more comprehensive package. Okay?
15 But anybody and everybody please feel free to comment.

16 I brought 150 copies with me today. If you know of
17 other people that would like to read it please take extra
18 copies. It's also available on our website so if somebody
19 wanted to download it they can but it is -- what, 60 pages,
20 Cecilia? Is that right? Is it 60? Sixty pages long. So
21 please, there's extra copies out front.

22 CO-CHAIR READ: Okay. So where we were on the
23 agenda if I can find the front page here --

24 FEMALE: We were at E.

25 CO-CHAIR READ: We had gone up to Section D before
26 the lunch break and we were going to start with E. I know,

1 Judge Laba, you wanted to explain some -- some information
2 with respect to ALJ and mediator training. So I would
3 propose that we take that section kind of as a whole. If you
4 would present first and then we would take comment after
5 that.

6 JUDGE LABA: Okay.

7 CO-CHAIR READ: Okay.

8 JUDGE LABA: The question that was posed to me is
9 "What training is provided right now?"

10 Prior to hearing a mediation every judge goes --
11 under the contract with CDE -- goes through 20 hours of
12 mediation training at a minimum. Actually we give them
13 closer to 42 hours of training. And 20 hours of Special Ed
14 training before they can mediate a case. Before they can
15 hear a case they go through 80 hours of training on both how
16 to be a judge and how to -- how to work within Special
17 Education -- the nuances of Special Education. So that's the
18 initial training program.

19 But all of our judges at this point with the
20 exception of one judge who hasn't been through the training
21 to do a hearing -- and he has not done a hearing -- all of
22 our judges have completed that initial training prior to the
23 start of this new contract. So under the new contract they
24 have to have training every year -- is it 40 hours? Ongoing
25 training -- 40? I can't remember. Twenty, thank you. In
26 mediation and 20 in hearing. My brain went dead there for a

1 second. So every year they have to have ongoing continuing
2 education of 20 hours in mediation and 20 hours in due
3 process hearings. And included in that is the pedagogical
4 interests that are involved, the parents' interests in the
5 cases, how to deal with different disabilities. There's a
6 variety of topics.

7 If you want to see the exact areas that are
8 outlined in the contract, our contract is on the website
9 under the Advisory page and you can just look at the entirety
10 of the contract and look at the training session.

11 So in order to meet that 40 hours of training on a
12 yearly basis we provide every month we offer at least an hour
13 to an hour and a half of training which is done in-house.
14 It's offered to all judges and when I say in-house it's not
15 that it's provided by one of us. It's that we provide it in-
16 house by video conference so last month we had a panel
17 talking about Charter schools. And it was a variety of
18 different people talking about Charter schools and
19 intersection with Special Education. So it's -- we bring in
20 people from the outside and we video conference to all the
21 judges throughout the State.

22 And we also attend two one-week training sessions
23 per year. The first we're attending in November is the
24 Seattle IDEA College. They're bringing their program to
25 California. So that's a week long program. And the second
26 is the National Special Education ALJ and Mediator Conference

1 that this year will be held at UCLA in the springtime.

2 So through that we get actually substantially more
3 than the 40 hours of training that's required. But that is
4 our -- essentially how we do the training program. And what
5 I would look for from the Advisory Committee is any
6 recommendations on topics that we could include in the
7 training. When we attend the conferences we don't really
8 have a say in what the topic is because it's put on by
9 somebody else but our monthly trainings or if something comes
10 up that is really of interest to us and that -- or
11 interesting you think we should really receive training on we
12 can arrange for that to be a separate day -- something like
13 that. For example the American Bar Association last year I
14 believe it was offered an entire day on Alternative Dispute
15 Resolution. And we brought everyone to San Francisco to that
16 training for the day. And that was above and beyond what our
17 normal ongoing training is that we provide. So if there's
18 something in particular please let us know. I know at the
19 last Advisory Meeting somebody suggested we watch the Fat
20 City video. Got the video. We showed it to the entire ALJ
21 corps. So we do take that and we would like recommendations
22 from the committee on areas in addition to ones that are
23 already listed on the agenda that we could offer training.

24 MR. MCIVER: Yeah. I will renew my offer of
25 training. In 2005 when you took over dispute resolution I
26 felt that the lack of information and knowledge about mental

1 health services in California and residential placement in
2 particular since that's often a key area of dispute
3 resolution in Special Ed. And to date I've had the
4 opportunity just to go to Judge Newlove's office in Orange
5 County and did a four or five hour training with that office
6 but the offer still stands for Sacramento and Van Nuys and
7 any other places that you have and if I didn't do the
8 training myself I can use my colleagues that are scattered
9 around the State to do that.

10 MR. LEVIN: The L.A. County Office of Ed would be
11 happy to participate in Special Ed training also.

12 CO-CHAIR READ: Are there any questions from the
13 floor regarding ALJ training? Or suggestions?

14 MS. CHANG: I have one. The people that you bring
15 to train these ALJ's -- the third parties. Are they as
16 unbiased or -- I mean as a parent I would like to make sure
17 that these agencies that educate these ALJ's are unbiased.
18 They're not skewed towards school districts or, you know,
19 they have no links or affiliations with school districts.
20 Just very impartial, independent agencies that could provide
21 ALJ's with their neutral perspectives of Special Education.

22 JUDGE LABA: So the question is do we --

23 MS. CHANG: I mean.

24 JUDGE LABA: -- do we use impartial parties or
25 equal parties.

26 MS. CHANG: Right.

1 JUDGE LABA: Right. Whenever we conduct a training
2 that is in-house -- not one that we go out and attend -- when
3 we go out and attend again we don't have control over --

4 MS. CHANG: Right.

5 JUDGE LABA: -- who conducts that training. But
6 when we offer the training within our own walls for everybody
7 we either select an independent party or we select at least
8 parties from both sides. I know last -- was it last year,
9 Ms. Vanaman? Were you on our panel last year?

10 MS. VANAMAN: Yes.

11 JUDGE LABA: So we always -- and then I don't
12 remember who was the district side last year -- Mr. Wyner's
13 been on one of our panels. So whenever we have a discussion
14 that needs both -- whenever we have a discussion involving
15 people who represent one side or the other we include both
16 sides. And then for example we did a training on autism.
17 Rather than go to a school district that offers an autistic
18 program for children with autism, we went to an independent
19 agency to have them come in and do that program. So we do
20 seek the perspective of both sides so there's a balance of
21 that whenever we do a training.

22 MS. CHANG: Okay.

23 JUDGE LABA: Okay?

24 CO-CHAIR READ: Okay. If there's nothing else I'll
25 move over to Section G which is "Access to Information from
26 OAH." And I guess the first question is "Should the criteria

1 used to be included on the list of attorneys/advocates be
2 changed?"

3 JUDGE LABA: So I realized it might help if you
4 know what the criteria is.

5 CO-CHAIR READ: Okay.

6 JUDGE LABA: Anybody on the attorney/advocate list
7 -- how they get on that list is that we have a certification
8 form and they fill out the form and they certify that they
9 provide free or reduced cost services. And then they get
10 their name on the list. It's that simple. And the form is
11 available on our website. It's updated regularly. I believe
12 this question is probably posed by somebody in Northern
13 California and I think the concern was over the difference
14 between what free and reduced cost means to different people.

15 CO-CHAIR READ: Okay. Any comments or questions
16 regarding that topic?

17 MR. WYNER: Yeah. What does it mean? What does it
18 mean to be free or low cost? I'm on the list. I generally
19 request retainers. Once a dispute gets going with a school
20 district there are few parents that can afford to pay the
21 services and what may start out to be something where the
22 parents are paying for the services rapidly becomes something
23 where the parents aren't paying anything and the law firm is
24 financing all of the legal services and costs that are
25 incurred. So, you know, my idea is, that can be free or low
26 cost but it's not instantaneously low cost. And I think a

1 lot of it depends upon what the nature of the case is and
2 whether someone believes that it's got any merit. There are
3 times, depending upon what the work flow is like in our
4 office where we might be able to take on something without
5 any retainer at all. But given the litigious nature of this
6 area it's pretty hard to just not charge anybody anything.
7 So if the list is supposed to be simply for people who are
8 doing it all pro bono, all contingent, then I think that
9 ought to be clearly defined.

10 CO-CHAIR READ: Okay. Anything else? All right.
11 The next item: "Recommendations for Improvement and/or
12 Changes to the OAH Web-Based Search Engine."

13 MS. VANAMAN: Could somebody explain to me how to
14 use the OAH web-based search engine? And I don't -- I'm not
15 trying to be facetious. I think it's a serious question.

16 JUDGE LABA: The current website for searching on
17 our web page is a Google search engine so it -- you type in a
18 key word and it searches for that and you have to really
19 narrow your search down --

20 CO-CHAIR READ: Okay.

21 JUDGE LABA: -- to a key word. If put in
22 'assessment' you're probably going to get every decision ever
23 issued. If you put in 'IEP' you're going to get every
24 decision ever issued. So it's a standard Google search
25 engine.

26 MS. VANAMAN: Yeah, but -- I'm sorry but I've

1 really -- there are any number of people in my office that
2 would be happy to share with you that my computer skills are
3 less than what they would consider adequate. But I really
4 struggled with this one and I don't get it. I mean I
5 don't -- if I put in for example 'Los Angeles Unified School
6 District IEP' I'm going to get a lot of stuff that is not a
7 Special Education decision. Is that correct? Am I doing
8 something wrong? Or is that correct?

9 JUDGE LABA: No, it is part of the struggles we
10 have with our web engine -- search engine. Because remember
11 we're part of a larger agency and so we are limited to what
12 we can and can't do to the web-based search engine. Which is
13 why we would like some input on changes that need to be made
14 so that I can take them back and take them up to the higher
15 level as to what it -- what would work for a search engine.
16 This is the other reason why we went to the ListServe and why
17 we list them by when -- by the month that they're issued in
18 to make it a little bit easier for you to search recent
19 decisions.

20 MS. VANAMAN: Here's what I --

21 JUDGE LABA: The changes need to come from a higher
22 level.

23 MS. VANAMAN: Here's what I've done and I don't
24 know -- I don't know if this is helpful.

25 I have a copy -- I have a hard copy of every
26 decision that you guys have issued since you took over in

1 July of '05. That -- whatever. I have a hard copy. I will
2 know from the system that we have that one of those cases
3 dealt with Valerie Vanaman Local Educational Agency
4 Residential. I will go on your search engine with as much
5 precision as I can and that decision won't show up. And I
6 mean with real precision and actually having some people who
7 know how to use it do it. Is it conceivable that in fact
8 every decision that's been rendered is not in fact inputted
9 in a way that it's even searchable?

10 JUDGE LABA: No. We verified that every decision
11 is searchable and findable. I wish I could give you a better
12 answer but it would make -- mean sitting down with you and
13 going through how we search for each of the decisions. But
14 we have verified that every decision issued is up there. All
15 I can say --

16 MS. VANAMAN: I put in the name of the school
17 district. I know this decision exists. I have a hard copy.
18 And it does not come up.

19 JUDGE LABA: Well, what we need to do is find --
20 tell us recommendations for how we can change that website so
21 that you don't have that problem and you don't experience
22 that trouble.

23 MS. VANAMAN: But if we don't know why it is that
24 it's not coming up when you put in the name of the district I
25 don't know how to change it.

26 JUDGE LABA: Well, I'd have to sit with you and

1 actually go through that particular case and why it's not
2 coming up. I'd have to see what exactly is happening. It
3 should be all means come up.

4 MS. VANAMAN: Is there any way that you can get
5 your system to -- I understand that it's an agency-wide
6 system. Is there any way that they could write in any part
7 of their program in it so that if you had an identifying
8 letter such Special Education Division that it would only
9 search Special Education Division and we wouldn't get
10 everything else.

11 JUDGE LABA: I don't know but that's a great
12 recommendation. Let's put that down and let me find out.

13 MS. VANAMAN: My computer guy says it should only
14 take three -- writing a program that inserts three letters at
15 the beginning.

16 JUDGE LABA: And I'm not the -- I would have to
17 talk to our OTR Department. I don't know the answer but
18 that's the kind of recommendation I'd like to take back to
19 them to figure out how we can make it more user friendly.

20 MS. VANAMAN: If there's something they could put
21 in so that when you put in the search if you use whatever the
22 identifying letters are that we only get Special Ed stuff and
23 we don't get every licensing case and every tax case or
24 everything else that's ever happened. That would be great.

25 JUDGE LABA: Okay.

26 CO-CHAIR READ: I think the -- if you go to the CDE

1 website and you look at decisions before 2005 the search
2 engine is actually pretty good for the older decisions and
3 the way the decisions come up you can see what school
4 district it is. I know with OAH decisions you can really
5 only enter in -- do word searches and then you get a list of
6 'Before the Off' -- and then it's cut off there. You kind of
7 have to bring up every case to figure out if it's something
8 that you might be interested in. So not only some parameters
9 with the search engine but some way of understanding when
10 those cases come up what's inside.

11 MS. VANAMAN: In our cost analysis of the increase
12 in costs we've had to do these cases since July of '05, it's
13 our estimation -- just to let you know -- that we spend about
14 four times as long trying to do a search of the decisions
15 using your system that we did prior to 2005. And those four
16 hours even if it's paralegal time -- if it's in a Unified
17 case for example that's \$140 -- whatever it is that we're
18 charging for paralegals - times four that gets put into a
19 bill somewhere that somebody pays for and it is a problem.
20 It is actually increasing the cost of the cases
21 substantially.

22 CO-CHAIR READ: Any other comments or questions on
23 the website? Maureen? Do you want to step up to the
24 microphone please?

25 MS. GRAVES: I'm not sure what can be done about
26 this but I think it would be very helpful if we could rely on

1 the calendar on the website. That has been a wonderful new
2 convenience to be able to look up when things are scheduled
3 and put in a case number. However there seems to be lag
4 times which sometimes vary wildly between when we get notices
5 and when they get up on the web. Sometimes one thing goes up
6 first -- once I showed up at the time on the calendar which I
7 assumed was up to date and I was not right. So I don't know
8 what the mechanics of that are but if that could be tinkered
9 with a little bit I think that would be helpful.

10 MS. VANAMAN: And even though this isn't the agenda
11 item with regard to that I do have a question. I had
12 understood the last time I came to one of these meetings
13 which was not the first under this parameter but before --
14 when I was -- when the question was asked 'do we rely on the
15 written notice or do we rely on what's on the web' that we
16 were supposed to rely on the web. Now I may have
17 misunderstood that. Which do I rely on? What's on the web
18 for the calendar or what I have in writing?

19 JUDGE LABA: I would say if you have a discrepancy
20 between what you have in writing and what's on the web you
21 should definitely call our office and verify which is
22 accurate.

23 CO-CHAIR READ: All right. No, we haven't. No,
24 we've done this. All right. Janeen and I are arguing if she
25 came back and can take over the moderation role which would
26 leave a lot of -- relieve a lot of stress on my part so I'm

1 going to go ahead and defer to her.

2 CHAIR STEEL: No problem. Thank you for filling
3 in, Jonathan, for me. Let's go to the next one which is
4 "When should translations of forms, decisions, orders be made
5 available?" Okay. Let me do this question. So any openings
6 for translation?

7 MS. VANAMAN: Can I ask a question what the current
8 practice is? If the family is a Spanish-speaking family for
9 example and the hearing was done with a simultaneous
10 interpreter, does the decision get issued in both English and
11 Spanish as a matter of course?

12 JUDGE LABA: If we know that the parent cannot read
13 English then we'll issue the decision in Spanish. They'll
14 get it in English first because it takes a while to get it
15 back in Spanish so they'll get the English version first.

16 CHAIR STEEL: If it's a pro per parent that only
17 reads English do they get an extension of -- so -- yeah. No,
18 no -- strike that. What about the forms? Are they getting
19 to parents immediately? So I guess -- so the decisions are
20 done if it's done simultaneous. Are the forms?

21 JUDGE LABA: Any forms that OAH uses are available
22 in the five most common languages spoken in California
23 schools on our website. And I could -- I know Spanish is one
24 of them -- I'm drawing a blank as to the other four.

25 MS. VANAMAN: Tagalog, Vietnamese --

26 JUDGE LABA: Chinese, Hmong -- so we get that

1 information from CDE -- what the five most common languages
2 are and we publish those on our website. But if somebody --
3 if we translate something -- let's say somebody needs it in
4 Farsi. Once we translate it we have it and if somebody were
5 to just let us know 'I need it in Farsi' we will send it to
6 them in Farsi.

7 CHAIR STEEL: Because I just go back to the one
8 case we had where it was a district filing and the filing was
9 in English, all of the paperwork that went to the parent was
10 in English and the parent was Spanish-speaking primarily.

11 JUDGE LABA: But somebody has to tell us. If we
12 don't know --

13 CHAIR STEEL: But if you call the parent --

14 JUDGE LABA: If nobody notifies our office that
15 they need forms or they need translated documents there's no
16 way for us to know that. So we rely upon the public to let
17 us know in their particular case that they need translation
18 and what language they need it in.

19 CHAIR STEEL: Okay. I'm just going back to --
20 we'll go back to then -- it's a district filing in English.
21 And they file it against the parent in English in OAH. Who's
22 supposed to notify? You're saying that the district -- I
23 mean remember that the parent is getting the documentation --

24 JUDGE LABA: Right.

25 CHAIR STEEL: -- in Spanish.

26 MS. VANAMAN: In English.

1 JUDGE LABA: Well --

2 CHAIR STEEL: In English, I'm sorry.

3 JUDGE LABA: In English, right.

4 CHAIR STEEL: And so --

5 JUDGE LABA: How they --

6 CHAIR STEEL: Who is going to notify you? The
7 district who has just filed in English?

8 JUDGE LABA: Well, that's a very good question that
9 I hope the Committee will consider. Should there be a
10 requirement that the district notify us what language if they
11 are aware of it? That the parents should receive documents
12 in. It's on our form. It says on our form for requesting a
13 hearing. It's on there as to if you need a translator and
14 what languages do you need?

15 CHAIR STEEL: So what we -- I'm just trying to
16 figure out if we have -- if it's going to be -- I'm just
17 thinking if we go back to the Notice requirement. That if
18 the notice -- parents are supposed to bring a notice. Would
19 that be proper notice? If a district notifies you that it's
20 supposed to be in Spanish would it be proper notice to the
21 parent if the filing was in English?

22 JUDGE LABA: And that's a legal question that --
23 this is not the appropriate forum for me to say yes or no to.
24 What I'm saying to you is I need a recommendation back as to
25 how you would like OAH to proceed on that issue.

26 MS. VANAMAN: And in line with that I'm confused

1 because I'm obviously not doing it right. When you need
2 someone who can do simultaneous translation because it's the
3 only way that the mediations work is if you've really got
4 somebody who can do it -- how do we give you effective notice
5 that we're going to need such a person so that in fact we
6 know that person's going to show up?

7 JUDGE LABA: You can call your support staff person
8 and let them know that you need a translator. You can submit
9 a letter in writing. If you're concerned that someone is
10 going to actually show up because we do contract these
11 services out and it's not a perfect system. There are
12 instances where someone doesn't show up on time, doesn't show
13 up at all, leaves early. They happen. But if that happens
14 please let us know because we will not use that service for
15 that particular item again. But they are contracted
16 services. As soon as you let us know we will confirm that
17 and set that up. If you'd like confirmation that it's
18 actually been ordered and they're going to show up, who to
19 expect, etcetera, just check with your support staff person.
20 They'll be happy to let you know.

21 MS. VANAMAN: So it's not enough to put in our
22 complaint that we want a --

23 JUDGE LABA: Oh, if it's in the complaint we should
24 catch it. But please don't bury it. You know, put it
25 someplace --

26 MS. VANAMAN: We put it in caption.

1 JUDGE LABA: Yeah. Put it someplace plain as day
2 that that's what we -- that's what you like.

3 CHAIR STEEL: I have a recommendation. We need to
4 go back to Section E. This must have been from the web.
5 They felt that there was not enough time spent on Section E
6 which is the ALJ mediator training. I was not here for that
7 discussion so I -- I don't know what -- what is underlying
8 this. But is there --

9 CO-CHAIR READ: Judge Laba gave an overview of the
10 training that ALJ's undergo and then there was a few comments
11 on specific topics that folks would like to see the ALJ's
12 undergo training and -- but if anyone has any further
13 comments or questions --

14 CHAIR STEEL: I guess I -- because I wasn't there
15 one of my concerns and I actually talked with Judge Laba
16 about this is that we were -- the concern that I want to make
17 sure that they understand the process. Because even in our
18 discussion there was an inference that when it's a district
19 filing that they're more likely to prevail. And that
20 concerns me. That there is an inference of that. And I want
21 us to make sure that that gets in the training that they are
22 relying on the law and that there is consistent decisions and
23 I'm -- you know, we're concerned about that inference. We
24 feel it in mediation and so how do we ensure that those
25 trainings are ensuring that it's not only what, you know,
26 parents are encountering but that we're looking at any

1 potential biases that may be occurring within those judges.
2 And that's just from my own concerns and families because
3 we're -- it's really having an understanding and also too
4 we've all heard -- and this is one of the concerns -- we've
5 heard things in settlement discussions or in mediation that
6 are really unacceptable discussions at times. And so I just
7 want to make sure that some of those issues that there's some
8 discussion about sensitivity or understanding of disabilities
9 are being addressed in those trainings.

10 CO-CHAIR READ: Cecelia had the same concern that
11 she brought up.

12 MS. CHANG: Independent agencies training the
13 ALJ's -- I mean how independent are they? I mean do they
14 have any affiliation with the school districts or are they
15 really unbiased as they should be? And Judge Laba did have
16 an explanation that yes, they do have both sides come in to
17 train the judges.

18 CHAIR STEEL: So what -- but I -- and that's great
19 but if we know that this is the -- this is what we're feeling
20 now that means that whatever has been done till now I'm
21 not -- I'm a little concerned about it. Right? I mean if
22 that's the concern, is that we know that's what's happening
23 but maybe what do we want to do differently? I have a
24 comment on the search engine.

25 CO-CHAIR READ: Okay.

26 CHAIR STEEL: So any other comments on the -- all

1 right. I'm going to go back to the search engine. I have a
2 comment on the search engine which is -- the suggestion is:

3 "Use categories on both and/or basis. Possible
4 categories school district name, SELPA name, county office of
5 ed., other agency name like DMH, issue allegation topic,
6 predetermination, i.e. autism, over one year"

7 So those are the issues. This looks like the SEHO
8 search engine and some -- right? And so I -- and that's from
9 -- and then I have another comment.

10 "Over a year ago I called every single attorney
11 advocate that is on the list. Not one was free. It was one
12 more colossal waste of my parental time."

13 I wasn't here for that discussion.

14 CO-CHAIR READ: So one of Steve's comments was to
15 define what low cost -- free or low cost is. So that folks
16 understand where they can go for actual free consultation
17 rather than places that will potentially charge.

18 MS. VANAMAN: Now I find that comment a little hard
19 to understand given that -- I assume you were on the list and
20 Protection Advocacy's on the list and people who are clearly
21 free, free, free -- whatever that means are on the list. So
22 I'm not sure -- free in terms of cost or free in terms of
23 having time to take the case?

24 CHAIR STEEL: And that is a really interesting
25 point because remember that, that's the hard part is that,
26 you know -- I mean there -- I think it's in -- for us I think

1 everybody's aware that we have an open caseload but we have
2 100 families at all times on our waiting list and we see
3 about 30 families in our office to give brief counsel at
4 least per month. So we're seeing hundreds of families but
5 there is no way we can represent every -- I think Protection
6 Advocacy, Public Counsel, Mental Health Advocacy, Disability
7 Rights Legal Center Alliance -- all of us are the true --
8 like don't -- we're no cost legal services.

9 And we -- and so one of the issues that we're
10 facing is trying to figure out some additional ways to help
11 families that end up going from person to person to person.

12 But I think the definition is important but
13 there's -- we're on the list, too.

14 I have another question. "Prior to every school
15 year every parent giver has a full -- has to fill out
16 language preference with the district." That's a comment.

17 So I think it's that the districts are on notice of
18 the language preference so they should be able to tell.

19 "On ALJ training -- in regards to intensive versus
20 non-intensive services this is such an important part of an
21 IEP. I must first set this up. A parent has a child that
22 has no functional mode of communication and they know that
23 the child needs more intensive remediation to be audible and
24 intelligible because it is possible to improve. ABA provider
25 and private speech and language provider have been able to
26 get the child to speak. It is vital that the ALJ understand

1 that a truly scientifically based delivery has a set of
2 protocols on the delivery model of the service."

3 MR. WYNER: Valerie and I were joking. I mean that
4 sounds like a good case. That's what we do. We put on those
5 cases, you know? That's not -- that's not -- it's
6 unfortunate but it's not unique to what we do that you've got
7 to make a case for why a child needs a particular thing and
8 that's what this whole process is about.

9 MS. VANAMAN: And you know at the heart of it --
10 not to belabor the training program part of this but the
11 reality is that in when 94142 was passed in 1974 the words
12 'unique and individual' which has remained in the statute
13 since that time really mattered. Because what's intense for
14 one child may be non-intense for another child. What's an
15 appropriate behavioral intervention program for one child may
16 be totally inappropriate for another.

17 And I always worry when we do these sort of broad
18 brush trainings that purport to go to content because the
19 reality is that at best what you can learn is the vocabulary
20 and the various strands of thinking that exist. But anybody
21 who tries to tell you -- in my opinion -- there is a district
22 that is spending a lot of money to try and prove that I'm
23 wrong on this but in my way of thinking you don't cookie
24 cutter a program for a classification of a child. That's
25 exactly contrary to what the law is. So that if you are
26 doing trainings where people are coming in and saying to you

1 -- if you have a child whose IQ is X and who has Y
2 involvement and Z this, this is what you always do. That's
3 really not effective training in terms of the reality of the
4 world we live in.

5 And so when you're getting into this intensive
6 versus non-intensive I don't know how you train on that other
7 than you introduce people to the vocabulary, you introduce
8 people to the strands of thought that exist, you introduce
9 people to the kinds of outcomes that are there. But you
10 can't categorize it and I think that's what this question is
11 about is one thing fits all. Because it just isn't true.
12 And I think the one thing that all of us have learned is that
13 what works for Johnny may not work for Betty.

14 FEMALE: I have one comment regarding the ALJ
15 training. I'm a parent. Went through a due process and the
16 whole shebang and basically I got an impression that ALJ's --
17 some -- do not have a full grasp of Special Education Law.
18 Myself -- we filed for a stapehood and the decision came back
19 granting stapehood however the judge allowed the school
20 district to basically choose the provider so basically it
21 defeated the whole purpose of stapehood. That kind of thing.
22 And so I would like to make sure that the ALJ's have a full
23 training on Special Education laws especially those
24 (inaudible) new ones and also have a better knowledge of
25 disabilities, specifically autism or MR or I mean the
26 disabilities that come to hearing. I hope they get trained

1 enough so they know what scientifically-based interventions
2 are and sort of I guess cut the cycle time for the training
3 and the end of hearing (inaudible) first in the disabilities
4 cases that they have to decide in.

5 CHAIR STEEL: I think there's going to be an
6 ongoing concern. I have another comment from the web:

7 "I attended a mediation hearing with an OAH
8 mediator retired judge. The mediator went into giving her
9 personal opinion on education therapy agencies. That was
10 pretty biased and it should not have occurred. Is this part
11 of OAH training for mediators?"

12 JUDGE LABA: I'll give a quick answer. Avoiding
13 bias is a part of not only mediator training but ALJ
14 training. It's part of both.

15 CHAIR STEEL: But I think it's important. I mean
16 and this coming -- and this is -- we talked about this
17 specifically that I think that we've -- I think everybody's
18 heard some -- some either predetermination or some pre-
19 thought. I've heard it. You know -- I've had all this
20 experience in this specific area. So I guess, is there some
21 discussion to prevent that type of bias or is there some
22 oversight of somebody when they're going to mediations to
23 oversee them to be able to say that's not acceptable or -- I
24 mean what is -- are they just out there? They can say
25 whatever they want and there's no oversight or no
26 accountability. I guess that's my question. It's like we're

1 expecting -- we're trying to pull districts into
2 accountability. That's why we're in due process. And yet if
3 there's no accountability to the ALJ's that we're meeting
4 with then what is their accountability?

5 JUDGE LABA: Well, you've asked me two questions.
6 One is do we continue to do training in this area? And
7 absolutely and if you can come up with additional either
8 services or classes or anything like that that you can think
9 of that would -- we could offer to the ALJ's about bias and
10 about conflicts, etcetera, avoiding that perception of bias
11 please let me know. Give me those recommendations.

12 In fact right now we have multiple judges going
13 through the National Judicial College Course in Ethics which
14 is avoiding bias -- that kind of thing. So that's your first
15 question I think.

16 Your second question is yes, we have oversight. I
17 am responsible for personally observing every single one of
18 the ALJ's in mediation and in hearing in a given fiscal year
19 and I'm in that process right now. In addition to that each
20 of their individual presiding judges observe them in
21 mediation and in hearing on a random basis.

22 Any time I get a comment or a concern from the
23 public presented to myself or the presiding judge -- even
24 through those anonymous surveys that you get at the end of
25 hearing and mediation -- we get comments lots of times that
26 name the judge and identify problems that occurred. We

1 address each and every one of those. We may not be able to
2 call that person because it's anonymous on the survey but we
3 do address each one of those not only directly with the judge
4 but as an overall training issue for everybody.

5 So there is oversight that's occurring. But I
6 encourage everybody -- if you experience a problem with a
7 particular judge or mediator you can contact their presiding
8 judge. There's an organizational chart on our web page so
9 you can find out exactly who to contact or you can contact
10 myself directly as supervisor for the Division. Either one
11 of us -- you can contact and address your concerns. And we
12 do want to hear about it because, you know, we can't be at
13 every single mediation and observe every single thing that is
14 said and done. If there's a problem we need to know about it
15 and we rely upon you to identify things that we can't catch
16 on our own.

17 MR. WYNER: In fairness to whoever is doing the
18 mediations I'm not sure I understand the question. Because
19 as I understood mediation it's kind of like Las Vegas.
20 Whatever happens in mediation stays in mediation.

21 JUDGE LABA: Right.

22 MR. WYNER: Nothing's ever going to be repeated.
23 Nobody's ever going to say anything about it. And there will
24 probably be lawsuits about that because many people find it
25 difficult to keep quiet about what is actually happening in
26 the mediation process.

1 But the fact is if I have a -- if I'm in a
2 mediation and I think I have a really strong case, I would
3 want whoever the mediator is -- and I would suggest that you
4 ask for an Administrative Law Judge instead of some temporary
5 judge because the Administrative Law Judges know Special
6 Education far better than people who just do this hourly.
7 But I would want the Administrative Law Judge to sit down
8 with the school district and say look, you know, they've got
9 a strong case on the following six issues and if I were
10 deciding the case you would lose. You know, if you want a
11 judge to be able to do that and help influence the course of
12 the mediation I don't see how you stop them from saying, gee,
13 in my experience -- which may mean I've had people from that
14 agency testify four times before me and they didn't make a go
15 of it. And so I don't really think very much of the agency.
16 So I -- I don't really understand. I mean when you're in
17 mediation you're not being pressured into settling. You're
18 given the opportunity to settle. Now maybe this is a problem
19 if you're going to mediation and people are unrepresented but
20 even then, I mean I thought the whole point of the mediation
21 was to find out whether or not someone knowledgeable and
22 independent thought much of your case.

23 CHAIR STEEL: Yeah. I mean like I said I think
24 part of it is that a lot of it is -- it's confidential what
25 happens in the mediation. But I think that what we're --
26 what I'm also providing is some information of families that

1 have come in outside -- that have been in mediation and have
2 felt that pressure. Because we actually make recommendations
3 for parents to go to mediation only. Right? So mediation
4 only is where there's no attorneys present. And there's --

5 MR. WYNER: And the success rate on that is what?

6 CHAIR STEEL: Not very good. Right?

7 MR. WYNER: Right.

8 CHAIR STEEL: And that's the thing. If there's a
9 really true mediator that can help negotiate those, too, you
10 would hope that it actually could work. But --

11 MS. STEVENS: Can I speak on that?

12 CHAIR STEEL: Yes.

13 MS. STEVENS: I'm Kristin Stevens. I'm a parent.
14 I've done pro se. I've had attorneys. I've done it many
15 different ways and I say the first part of a due process
16 that I went to -- and I was with some attorneys who didn't
17 even stand up for me and I was yelled at for asking the
18 credentials of the persons that were going to be attending to
19 my child by the ALJ. I've since learned that I could have
20 asked that person to be removed. It was a very scary
21 experience because frankly I did know the law and I just felt
22 somebody should have spoken up and said well, that's her
23 right to.

24 I also know that I would play it a little closer to
25 the vest. I did not want them to see all my documents. I
26 had some very strong documents should we have been able to go

1 all the way to court. So there's kind of the other side of
2 the coin where I didn't want certain documents being taken
3 out of the room to show them so that they could decide how
4 good of a case I had. It -- it's a tossup and a gamble. As
5 a parent it's a real gamble as to what you want them to see.

6 I've been served with a subpoena. I think
7 frankly any attorney or district that serves a family with a
8 subpoena for their records and knows that the parent is not
9 represented at the time should be sanctioned. Frankly it's
10 very humiliating for the child who is involved. The damage
11 that's done when a parent is called out of their driveway and
12 the kid has to ask well, what was that about? You know, as
13 it goes on there's tactics that are used that are more for
14 harassment than anything else. Only later did I find out oh,
15 they can't ask for those records. It's not allowed.

16 It would be helpful -- I'm jumping around a little
17 bit. There's a pamphlet that was mentioned. I think that
18 would be very helpful. Something that's handed out -- I
19 think it would be sent out with the procedural safeguards.
20 It should have the websites because there's families I know -
21 - I've been asked a lot of questions because I've been
22 through this and I'll say oh, you go to OAH but to be able to
23 hand that out to somebody -- because there's families who
24 don't have internet. They're going to have to go to the
25 library or some other place to go find that internet but at
26 least they'd have that pamphlet to go through. It would be

1 very helpful.

2 I also think -- and I'm not really sure what the
3 deal is with this but school districts have their own
4 procedural safeguards and I find them extremely selective in
5 what they'll tell parents. I didn't act on certain things
6 and should have but I was reading the parent procedural
7 safeguards. I think the one on OAH is much better. I think
8 that's the only one that should be handed out to parents.
9 It's not selective for what the district wants parents to
10 know. Or the way they word it so that it becomes threatening
11 to a parent because you're not really sure about the IEP and
12 they're real clear about well, you could pay for it yourself.
13 But they don't really say you have a right to. It's just the
14 wording of the way these things are done. For a parent who
15 are going through this for the first time -- anyway.

16 CO-CHAIR READ: Can I ask you a question?

17 MS. STEVENS: Yes.

18 CO-CHAIR READ: As an attorney I've seen mediators
19 who I think -- the approach that Steve likes that really put
20 the parties on the spot as to the merits of their case and I
21 found that to be quite effective, too. I'm not sure I'd want
22 to see that in a mediation where the parties are not
23 represented. Maybe, maybe not.

24 But the other type of mediation approach I've seen
25 is more of the accommodator which is kind of this is what
26 their concern is and trying to bring the parties together.

1 What do you -- what would you like to see the mediator's role
2 to be?

3 MS. STEVENS: I have had experience with what I
4 felt was a very good mediator and I don't recall them asking
5 to see a lot of our documents like the other one. I think
6 the first one -- it was going downhill real fast. I mean
7 this was a mediator who was not experienced, who didn't
8 understand you don't make placement decisions before you have
9 anything else set and that was what everybody's basis was
10 going on.

11 And I would see the mediator as the one that I had
12 a good experience with and it was truly not telling me
13 whether or not I had a good case, whether they like my
14 documents or not. If I show it to a mediator -- I want to
15 show it to a mediator. I don't want it taken to the other
16 side.

17 A mediator needs to know what Special Ed Law is.
18 And frankly I think I'm a parent who can speak a lot more
19 intelligently about this because I've been put through the
20 wringer on this for five years. But there's a lot of parents
21 -- and I would say the first mediation I had no idea I could
22 ask that guy to recuse himself for what he did. I had no
23 idea he was a temp. Those things might be kind of nice to
24 have in a pamphlet. But the second mediator who really
25 stayed neutral -- I didn't hear how their kid had ADD, too.
26 That was the first mediator. I think there were biases

1 explained and I was sitting there thinking well, why do I
2 want to hear about his kid? Because to me I think he had a
3 bias whatever it was from his own personal experiences and at
4 least he was honest enough to put it out there so I kind of
5 got an impression of the person who was mediating our
6 settlement at the time.

7 CHAIR STEEL: For us one of the things I've always
8 felt with a neutral mediator -- I mean a mediator that
9 doesn't -- isn't analyzing the case. So I mean for us that's
10 always been my experience, that they're really trying to
11 bring the parties together versus trying to analyze. But
12 that's based on our experience and our cases. So I mean I
13 think we may have all different practices that result in
14 different needs and I know that in ours we actually are
15 trying to build some major bridges and, you know, there's
16 some other issues going on and I think that that's part of --
17 I've always wanted -- I think we've always been more
18 successful where we have a neutral mediator that's really
19 there to bridge those gaps and not analyzing the case.
20 That's for our -- that's for our work.

21 MR. WYNER: Just two responses to what you're
22 saying. First I'm not suggesting that you go to the
23 mediation and put on your trial or your hearing. And when I
24 say, you know, I'm saying you go in there. You explain what
25 your case is and you get a general feeling. Whether you can
26 prove that case or not, unless you can cogently present it

1 you won't convince the mediator that you have a good case and
2 frankly unless somebody wants to just, you know, be a sneaker
3 network going back and forth and say this guy's offering this
4 and they're offering this and they're offering this because
5 you can't sit there and talk to each other -- I'm not quite
6 sure what the value of all of that is. So that's one point.
7 So I'm not suggesting that you lay out your whole case or
8 that -- I mean we've all done enough of these cases to know
9 that rarely is there a big smoking gun that blows up the
10 whole case and the whole case turns on this one document.
11 These cases are far more complex. Well, it would be unusual.
12 These cases are far more complex than that and yeah, if you
13 have one of those you keep it. And there have been times
14 that I haven't shared every single fact that I thought was in
15 my favor but enough to convince somebody that we should win
16 and the parties should settle. But the danger of that is
17 with people who are unrepresented. You may think you have
18 the smoking gun and you may not have the smoking gun. You
19 may proceed through a due process hearing on the theory that
20 you think wins the case when even a biased mediator could
21 convince you that no, that isn't the law and you're not
22 looking at it exactly the right way. So I think that there
23 is a balance and I think you're right, Janeen. People
24 approach this differently. I mean if I want to settle a case
25 and I just want to put out the terms I can send a letter and
26 the other attorney can write me back. I felt the point of

1 mediating was to get in a room and somebody gets a feeling
2 whether or not they've got a good case or they've got a bad
3 case. And maybe it's just the way I've been but I mean all
4 the mediations I've been in, the mediators would come back
5 and say, 'well, they're arguing this and they think they can
6 win on that.' And we get something to talk about.

7 MS. VANAMAN: You know, for whatever reason we've
8 forgotten what mediation I think is all about. On lots of
9 different levels and I'm as guilty of this as anybody.

10 Mediation at its heart involves listening and it
11 involves a willingness to admit error. And when you have
12 effective mediation is when you have people who come --
13 including the mediator -- who are in a position to listen and
14 to be there as a listener and when both sides are there to
15 listen. When the parent comes willing to listen that their
16 view of the world may not always be what it exactly is --
17 there may be another way to think about it. When the
18 district comes in a willingness to acknowledge that maybe
19 they're not perfect and everything they've done isn't exactly
20 right and the mediator is able to help the parties listen and
21 then help the parties be creative in fashioning a solution
22 that works with the benefit of the child -- at the end of the
23 day that's what this should be about.

24 Then it's not a game. It's not 'I don't show this
25 and I don't show that and we don't get into that' because
26 that isn't what this process should be about. What it should

1 be about is look, we've got a problem or we wouldn't be here.
2 Let's try and listen to each other in a way that allows us to
3 get to an end that's going to benefit everybody and where the
4 child's going to get what the child needs in order to move
5 ahead. And by its very definition mediation results in an
6 outcome that neither -- effective mediation often results in
7 an outcome in which neither party is perfectly happy but in
8 which a bridge has been built and something goes on that
9 allows things to move on.

10 If in fact we have reached a stage where there are
11 cases in which those bridges and that approach is not going
12 to be possible then what we're going to see, I think -- and I
13 think it's already happening -- is it will simply be cases in
14 which mediation is waived and we go directly to hearing
15 because they just have to be litigated. That there isn't any
16 ability to listen.

17 But I think the point of the mediator training with
18 regard to this has to be training that centers on not only
19 them learning how to listen but how to help the parties
20 listen. Because in the absence of that we get into this
21 'which case is this and which case is that and I would rule
22 this way or I would rule that way' and it's not helpful often
23 in reaching a creative solution for the child. And I think
24 that's what we need to think about when we think about
25 mediation.

26 MS. STEVENS: It could be different for parents and

1 it could be different when there are attorneys involved
2 because it does -- they could be mediated a little bit
3 differently. They could be treated a little bit differently
4 because when attorneys are present -- and I saw a beautifully
5 mediated settlement -- I thought now this is how it works.
6 This is good. I just think the training would be very
7 important.

8 I'll put my two cents in. I've been to over five
9 resolution sessions. They're a waste of time. They never
10 send the person who can actually do something. They send a
11 person who you think is there to resolve issues but -- it's
12 just such a waste of time. I wish OAH or whoever put this
13 together would get rid of it because the school districts
14 I've been in -- they don't waive them. They make you go
15 through it. I don't bring an attorney. It's stupid.
16 Nothing gets resolved because they all want to know what
17 you're going to ask for. And what your kid -- to me it's not
18 what I want, it's what my kid needs. And it doesn't matter.
19 I get told at the end 'well, I'm not the person to make the
20 decision. I have to go talk to someone else.' I'm like
21 well, what was the point of sitting here and talking to you.
22 It just -- resolution sessions by and large have been a waste
23 of time for myself and at least eight other parents I know
24 who've gone to them. I'd like to see those eliminated.

25 MS. VANAMAN: You should really let Congress know
26 that on the re-authorization because resolution sessions were

1 put in because district lawyers went to Congress and told
2 them --

3 MS. STEVENS: Yeah.

4 MS. VANAMAN: -- that they didn't even know there
5 was even problems and if the parents would just tell them if
6 they could do it then they wouldn't have to have lawyers.
7 It's real important that you let Congress know that for you.

8 FEMALE: I need to respond to that because I do
9 quite a few resolution sessions and the large majority of
10 them settle. And in fact the large inventory of our cases
11 settle and very few settle from mediation because usually if
12 we can settle them we go all out to settle them at the
13 resolution session.

14 It is in no one's interest to have a case go
15 forward if it is settleable (sic) because people just get
16 madder -- get madder at each other through that process and
17 we need to be able to work together after the case is
18 resolved and the cost involved is prohibitive for both sides.
19 So we do use the resolution session and it has made an
20 enormous difference for us. So it may not make a difference
21 where you are but I want you to know that it is making a
22 difference where I am.

23 And secondly, as far as what Steven was saying, you
24 know, I think there (inaudible) needs to be flexibility from
25 case to case because on other cases we've gone to in
26 mediation -- we often want to have an objective third party

1 look at not the evidence -- not putting on the case -- but
2 the viewpoints of each side from a legal perspective.
3 Because one side or the other has not been able to convince
4 its side that settlement is something that should occur. And
5 we sometimes need an outside expert in law and I think if you
6 want that in your mediator you ought to be able to ask for it
7 because it does make a huge difference in some cases.
8 Whereas shuttle diplomacy or just moving back and forth
9 between conference rooms in my opinion gets people more
10 entrenched and more unhappy with each other and is rarely
11 effective. So thank you.

12 MS. STEVENS: So now forgive me -- you're an
13 attorney?

14 FEMALE: No. I'm a resolution specialist for a
15 school district. That's what I do.

16 MS. STEVENS: Oh. Because I'm curious and just --
17 and that's great. And so it probably does work for you
18 because you have the tools to go into a resolution session --

19 FEMALE: Yes.

20 MS. STEVENS: -- and --

21 FEMALE: But instead of throwing the baby out, you
22 know, you need to look about how it's happening and fix the
23 water a little bit. But I think it's been enormously
24 effective in reducing costs and improving relationships.

25 MS. STEVENS: I just know there's a lot of
26 (inaudible) when they find them -- just an attack session on

1 their credibility or that they even were asking for
2 something. And I'm in a district -- I've got two kids in two
3 separate districts and I have had them in three or four
4 different districts so I've worked with many different
5 districts and I've seen some of the same -- there's a book on
6 it. The same tactics used in an IEP as to whether we were in
7 a resolution room -- it's very intriguing as a parent to go
8 into these different meetings of all different kinds and sit
9 across the table from a school district and see some of the
10 same tactics used.

11 MR. WYNER: I haven't really given a lot of thought
12 to this so I'll just throw out this idea. People should be
13 aware these resolution sessions are not confidential. Nothing
14 that you say in that resolution session -- everything you say
15 can be repeated at a due process hearing. Okay? They're not
16 mediation and they're not confidential. Have you ever
17 suggested when you go with someone that they provide written
18 notice that they're going to audio record the resolution
19 session?

20 MS. STEVENS: They're going to what?

21 MR. WYNER: Audio record the resolution session.

22 MS. STEVENS: Oh, I requested it once. But they
23 said no.

24 MR. WYNER: They said no?

25 MS. STEVENS: Well, for my own disability.

26 MR. WYNER: Well, why didn't you say then we're

1 done.

2 MS. STEVENS: I did. They said they're not waiving
3 it.

4 MR. WYNER: Okay.

5 MS. STEVENS: I thought that's the thing --

6 MR. WYNER: I mean but these things--

7 MS. STEVENS: -- that both parties have --

8 MR. WYNER: -- these things -- I mean if you find
9 yourself in a hostile environment what you're saying is you
10 feel trapped. And people can't get out of a hostile
11 environment. I mean if it's hostile then you leave. And you
12 don't participate in it. And, you know, if I were you and
13 you expected that coming just walk in with the tape running.
14 What are they going to do? Take it away from you? You gave
15 them notice. Here you are. You're talking. They can now
16 say on the record you can't tape it. And we're not going to
17 have this meeting because you're going to tape it. You say
18 okay, great. Let's go to hearing. See you.

19 MS. STEVENS: I think a lot of parents who don't --
20 who aren't -- who do not have representation would appreciate
21 that because it was my first resolution session. I didn't
22 ask to audio but it was --

23 MR. WYNER: I've never done it before. I'm not
24 trying to give legal advice to people but --

25 MS. STEVENS: No. I know. But I find that an
26 interesting --

1 MR. WYNER: You know, all parents come and say, you
2 know, what do we do? How do we stand up for yourself? And
3 the first part is trusting your own gut and knowing that
4 you're not supposed to be abused by people. And not to sit
5 there and let anybody abuse you and yell at you or talk down
6 to you, you know? It's just not appropriate civility in
7 these proceedings.

8 MS. STEVENS: Yeah.

9 CHAIR STEEL: We have to get back on -- I have a
10 couple comments that are asking where we're at. So let me --

11 MS. STEVENS: I would like that on the pamphlet --
12 that nobody should feel like they're any less of a person or
13 however it wants to be put, you know, that you do have
14 choices as a parent.

15 CHAIR STEEL: So I think there's two -- one of the
16 questions -- because we've sort of went from the subject of
17 translation into mediation I think we should -- you'll see on
18 other issues -- just to clarify which topic and we have a
19 couple comments. So just -- I think we should --

20 It leads us right to this question of "Should there
21 be a separate corps of mediators and ALJ's?"

22 So rather -- and we can come back to the pamphlet
23 because it looks like we're in the middle of the mediation
24 discussion so maybe we should look at that and let me read --
25 I have about six. So let me read the comments from the web
26 and then the next question is "Should we have a separate

1 corps of mediators?"

2 So the questions I have -- or comments:

3 "The most common challenge unique to families with
4 special needs is that they don't know about the Special Ed
5 process. By the time a parent gets to an attorney or an
6 advocate things have escalated to a very adversarial
7 situation. Parents often say that they don't -- didn't know
8 or were never made aware of the Special Ed process at all.
9 Yes, parents do receive their rights at the IEP but I'm
10 talking about just being made aware at all about Special Ed.
11 San Francisco Unified has taken out an ad to alert parents
12 about Special Education. This should be a part of the Back
13 to School Night and not left to when students are failing.
14 Our children should not have to fail in order to get help."

15 The next comment: "I can attest to the current
16 atmosphere at a local school at an informal hearing is
17 bullying the parent. I've been hearing this for years. If
18 the school AP can do this what's to prevent the mediator or
19 ALJ -- OAH needs accountability."

20 "Amen. Ms. Vanaman is absolutely right. The point
21 is that the child gets what they need in order to benefit
22 from their educational program. The child is the only reason
23 for Special Education."

24 "It would helpful for the parties to be able to
25 request the type of mediator they would like to handle the
26 case. Opinions on case versus not sharing opinions."

1 So let's go to this question. So should there be a
2 separate corps of mediators?

3 MS. VANAMAN: I'd like to talk about this for a
4 little bit. It certainly is not a secret to some in this
5 room that I opposed the transfer of both the hearing officer
6 role and the mediator role into a single agency.

7 I thought it was a bad idea when it was originally
8 proposed and I was involved in some litigation -- some
9 unsuccessful litigation that tried to stop that from
10 happening. And I opposed it at the time on the belief that
11 it would be very difficult to keep an effective mediation
12 system and at the same time have an effective hearing system
13 that did not become cross-contaminated.

14 The argument that was made at the time -- there
15 were a number of arguments that opposed that at the time
16 including the argument that in fact having individuals be
17 able to do mediations would make them better able to be
18 hearing officers. And that the cross-fertilization of the
19 roles would not only be cost effective to the State but that
20 it would be -- increase the effectiveness of the entire
21 process.

22 You accept the cards that you're dealt. We made
23 our effort to have there continue to be an independent group
24 of mediators who were not lawyers some of them. We lost.
25 You accept the system and you move on. And for two and a
26 half years we worked within the system and I don't think this

1 issue was raised again. It wasn't raised in any public
2 forum.

3 I have had experiences in the last five weeks which
4 have caused me to revisit my views on the combining of the
5 two roles and to try and rethink what the issues are that are
6 arising as a result of the combining of those two roles. I
7 accept as given and I believe it to be true the
8 representation that the information about a mediation does
9 not go from one mediator to the person that's going to hear
10 the case. There's no reason that I -- I accept that as
11 truth. I also know that as an institutional matter people
12 who share the same office space -- unless they truly don't
13 ever talk to each other -- talk about the people with whom
14 they interact in their professional lives. That should come
15 as no surprise to you that the attorneys and paralegals in my
16 office talk about opposing counsel, talk about directors of
17 Special Education, like to follow when Bill Himilright leaves
18 Beverly Hills and goes to Simi Valley and who's now coming
19 into Beverly Hills. I mean that's what our world is and
20 that's the world we talk about between -- depending on who
21 you are in my office -- eight and ten or eight and two. And
22 it is -- would be -- it would be a strange social dynamic if
23 the personalities involved in Special Education were not
24 discussed among people who share office space.

25 And moreover I find myself in cases in which I have
26 to take a fairly strong position against a particular --

1 let's for want of an example and without referencing any
2 specific case -- against a particular non-public agency for
3 example, with a mediator who I know -- because this is a
4 small world -- is at the very same time with another attorney
5 not associated with my office, hearing a case in which the
6 attorney for the parent is arguing that that child go to that
7 non-public agency and I am about in the midst of this
8 mediation to reveal a lot of crap about that non-public
9 agency because I need to do it to represent my client.

10 And that problem is very real now. And it is
11 pushing me back to the point of I think I can't do
12 mediations. If I have a situation in which I think I might
13 try and settle it with the other side without the assistance
14 of an OAH mediator because as you know my practice relies on
15 -- and I believe in -- resolution rather than hearing. But I
16 think given what I have encountered and what some other
17 attorneys in my office have encountered the last four to five
18 weeks just in terms of this inherent conflict that we may
19 find ourselves in an increasing number of cases in which we
20 are not going to be able to participate in mediation for fear
21 of contaminating in some way, shape or form another case.
22 And it's because we live in a small world.

23 And I fear that it's -- I mean I had a mediator say
24 to me the other day 'well, I just did a hearing and put a kid
25 in that program.' Now, you know, what am I supposed to say?
26 Okay, I'm about to do X, Y and Z with regard to my client.

1 Does that mean she's not going -- he or she is not then going
2 to the next time -- that's got to be there. It's got to be
3 in the back of their head that I, you know, had the goods
4 with regard to something and this other thing had happened.
5 And I fear that as the cadre of personnel doing this -- that
6 is as we get -- and I think it's important that they be that
7 way -- as we get long-term knowledgeable trained experienced
8 people hearing these cases as judges -- and I think that's a
9 valuable asset to the system -- that it becomes more
10 difficult at least from my perspective to see those same
11 people in mediation. And it's becoming a real conflict for
12 me. And -- and I think the reason is because ultimately it
13 is a small world.

14 Unlike a Superior Court where I might only have one
15 or two jury trials or two trials and I get sent off to
16 another judge to try it and in fact it's going to be quite a
17 different set of the facts -- we live in a constantly
18 decreasing world if you would. There are fewer and fewer not
19 more and more non-public agencies. There are fewer and fewer
20 non-public schools. There are fewer and fewer programs.
21 There are fewer and fewer of a whole range of things and as
22 that body of available alternative resources becomes more
23 circumscribed, it becomes even more of this tug and pull.
24 And I, you know, we know that we all predicted we wouldn't do
25 mediations -- the number of mediations would go down --
26 whatever. Of course that isn't what happened initially.

1 I fear at least for some of us -- and maybe I only
2 speak for me -- but I fear for me it is now reaching a point
3 where I think I cannot -- I cannot do the -- it's going to
4 become increasingly difficult to do a mediation with someone
5 who I also know is hearing cases. I'm not -- I'm perfectly
6 happy to use some -- some of the pro tems -- not all but some
7 of the pro tems but I am -- it becomes increasingly difficult
8 for me to see doing a mediation with someone who's also going
9 to hear a case. And it's because of this narrowing of the
10 world that we live in. And how what I say here in mediation
11 in this case may affect that judge's decision two weeks down
12 the road or three weeks down the road.

13 I think it is a problem in this small world. I
14 think we were right in our initial analysis. Maybe not for
15 all the reasons we articulated but in a very practical way I
16 think we were right and I think it deserves a really hard
17 look. And I would urge that someone take the time to give it
18 that look.

19 CHAIR STEEL: I think -- anybody?

20 MR. MCIVER: Yeah. This is a banner day for
21 Valerie. She may not know it but I'm going to agree with her
22 again, maybe for slightly different reasons. And I'll be
23 much briefer than my eloquent friend. But I also opposed the
24 concept of having judges also do mediations. And for exactly
25 the reasons that Valerie cited and I agree that I don't have
26 any doubt that the people keep confidential matters

1 confidential but it is that small world that we live in.

2 There's not that many people practicing in the
3 field and also I work for a department -- a mental health
4 department where we're always dealing with very privileged
5 confidential information and I know in a diverse office place
6 that people talk over lunch, again about not things that
7 breaches of confidentiality but it's that knowledge of
8 certain things that somehow is communicated to others in the
9 office without any malicious intent or anything but it's just
10 leakage.

11 And I don't see and I never have been able to see
12 that the combination of judges and mediators all in one pool
13 was an effective way to do it. The mediators that we
14 formerly dealt with were some of the most exceptionally
15 skilled mediators that we've ever met. They're highly
16 effective and some of them were not attorneys. Some of them
17 were merely parents of children who developed an expertise in
18 those mediation skills.

19 So to support most of what Valerie said that I
20 really think we should relook at the notion of identifying a
21 separate cadre of mediators that have no hearing decisions
22 involved.

23 MS. SMITH: And I seem to be singing the same song
24 for flexibility. But I will sing it again. I really think
25 that if the purpose of mediation is to try to resolve a case
26 before it has to go through due process and perhaps the

1 parties need to be able to indicate whether they want someone
2 or don't want someone who has -- is a judge because I think
3 for the same reason that Mr. Wyner articulated there are
4 times when we definitely would want to have a mediator who
5 was also actively hearing cases and very aware of the law.

6 And, you know, frankly it's really hard I think to
7 have a forum like this where rules are made by individual
8 people's experiences but in the preceding venue when we had a
9 different set of people doing mediations some were quite
10 effective. Some were not. Some were wonderful and we're
11 excited to see them and some you thought well, this is going
12 to be a wasted day. And often was. And I think the same
13 thing can be said today. So I would prefer personally for --
14 from our perspective to be able to make those choices in
15 concert if possible with the attorney for the parent or the
16 parent.

17 FEMALE: I don't think this issue ever totally went
18 away. It's been one of the pieces of the parent/student
19 legislative package that seems like a no-brainer to most of
20 the legislators that we talk about when we explain the
21 reasons why we think it's important to have separate groups.
22 They say yeah at the beginning -- I didn't oppose OAH
23 takeover of due process but I did have a lot of concerns
24 about blending mediation and judging the same people.

25 Actually I found out that school districts had
26 written more letters than we had protesting that plan in the

1 early -- in the summer of 2005 it seemed. But anyway I don't
2 think it's ever totally gone away. I guess it hasn't turned
3 into the disaster that a lot of us expected. I think partly
4 because OAH has made informal efforts to somewhat separate
5 people. I haven't had the same people judging and mediating
6 very much. But what I find is that -- especially it affects
7 mediations. You know, when I'm sitting there thinking I
8 really don't like any of the possible non-public school
9 options I'm sort of sitting here saying well, of course,
10 they're excellent for some students but in this particular
11 case I don't think -- I mean it just -- it's a whole new
12 level of game playing and trying to figure out how this might
13 affect another case. I haven't had the horrible feeling that
14 something I'm saying to this judge is going to affect my
15 client next week but I have often had the horrible feeling
16 that it's going to affect this judge sometime -- not because
17 he or she is going to do anything improper but because they
18 can't help being affected by the opinions of people who have
19 been in the field for a long time and are supposedly on the
20 side of one of these agencies. And I think there's no way
21 for a judge to really put that out and let the parties
22 respond to it. The judge can't say you know I've heard some
23 stuff -- I have some concerns. Because what starts in
24 mediation stays in mediation. So it's out there. Obviously
25 it's not judicial notice but I don't think it can help having
26 an effect.

1 Also one of the things that the legislature liked
2 about the mediation concept is that the Department of
3 Education was paying far less for mediators than its rate to
4 OAH judges. So this is a way of saving money.

5 Right now I don't find mediation helpful basically
6 ever. There have been a handful of cases where I think
7 mediators were helpful in the last few years but only a
8 handful and I think the kinds of things they did -- you know
9 sometimes -- I don't think I can say going into a mediation
10 I'm going to want a mediator who is going to read my client
11 the Riot Act or read the other side the Riot Act versus be a
12 kind, gentle problem solver. I don't think you know that
13 until you get there. I want somebody with both of those
14 things in their repertoire. About him I would not have fears
15 of having them engage in either of those roles as that seemed
16 to be appropriate.

17 And I think if the mediators read decisions they
18 wouldn't come in and say this is what I would do but they
19 would say this is how I see the decisions as falling out.
20 And I think, you know, one of the reasons that the whole
21 mediator role -- distinctions sort of fall by the wayside in
22 the last few years is that it sort of seemed like we're
23 arranging deck chairs on the Titanic.

24 And I just, you know -- nobody's talking about
25 outcomes today but I just wanted to express that I'm really
26 happy to see some shift in the outcomes and I think we're

1 going to see a lot more mediated settlements once school
2 districts see that the law is being enforced as I hope is a
3 trend.

4 CHAIR STEEL: I mean I think that from our
5 office -- our staff is, you know, the mediation has not been
6 as -- I've had a lot of experience over the last few years
7 with mediations in both settings now and I totally see that
8 it's harder to mediate a case now. It seems to be more
9 between the attorneys more than having a mediation where you
10 have the person sort of working between -- I don't mean like
11 the clock isn't running back and forth but really that person
12 helping to negotiate and working with both families and -- or
13 with both parties so I think that -- I mean I would like a
14 separate system. I think Learning Rights would support a
15 separate system for a lot of reasons.

16 It just would make it -- you know, what was really
17 nice to have a corps group of mediators -- some not so great,
18 some great -- I mean but at least you could rely on who they
19 were and that they had the training and they mediated where
20 now I'm not always -- you never know when you show up or
21 what's going to happen. And that's sort of where we're at.

22 CO-CHAIR READ: I'm not sure I've seen a systemic
23 difference in mediation between OAH and SEHO. My experience
24 has been with both agencies and depending on the specific
25 case and personalities that you have, there have been
26 effective mediators and ineffective mediators. One mediator

1 can be effective in one case and just not work out in another
2 so I'm not sure I can attribute it to one agency versus the
3 other or the fact that some -- that one agency has judges
4 doing mediation and the other has a separate entity.

5 I do share the concern about affecting a judge
6 acting as a judge in one case with conversations that go on
7 in mediations in other case. I share the same concern also
8 about judges coming in to cases with what they've learned in
9 a previous due process hearing. And I was thinking about
10 what Valerie was saying quite a bit to see if I could come to
11 grips with the difference between a judge's experience in a
12 previous due process case and their experience in a mediation
13 and perhaps the difference in mediation is that one expects
14 there to be a lot more open conversation because the whole
15 point of the confidentiality is to promote that free flowing
16 -- or flow of information and the admission of problems that
17 might exist that might not -- you don't want to get perhaps
18 dinged for in hearing.

19 So perhaps that is a significant difference because
20 the downside being not only is -- might that affect the due
21 process hearing but ultimately it's going to affect the
22 mediation and the information that you're willing to give to
23 the mediator.

24 MS. VANAMAN: Let me give you an example. It
25 should come as no surprise to those who know me that I would
26 go into a mediation and, for example, say 'Ms. Vanaman's

1 class is going -- they're going to tell you Ms. Vanaman's
2 autism class has this, this, this and this. Now let me tell
3 you what I know about Ms. Vanaman's autism class. What I
4 know about Ms. Vanaman's autism class is of the eight aides
5 that have gone through there in the last six months, seven of
6 them have filed Worker's Comp claims because the kids in that
7 class are so out of control and there's no behavior program
8 that they can't possibly be managed effectively by any system
9 because they have just thrown together a batch of kids who
10 don't belong and by the way here are all the Worker's Comp
11 claims that were filed.' Two weeks later that same person
12 serves as a judge in a case in which the district comes in
13 and says 'Look at Ms. Vanaman's class. We can educate
14 Johnny.' Are you going to tell me that that person I had as
15 a mediator two weeks before in the back isn't looking at
16 credibility issues?

17 I can poison through mediation every classroom a
18 district has. I just can't help myself. If that's what I'm
19 doing in terms of talking about this and it has to have an
20 impact and that isn't right. It isn't right for anybody. It
21 isn't right for the district people who have to come -- it
22 just isn't right. There's something wrong about the system
23 that allows me to do that.

24 Not only that, I walk into the hearing three weeks
25 from now and I don't have any idea who that hearing officer
26 or that judge has been with who's told him about the same

1 program I'm now talking about as a great program and they may
2 have told him three weeks ago it was awful and I don't even
3 know what I'm fighting. I mean it's a problem. It is a
4 problem.

5 JUDGE LABA: We just had one comment from the
6 public I wanted to quickly address. The question -- the
7 comment was "Given CED has entered into a contract with OAH
8 and were part of the opposition to maintain a separate corps
9 of mediators outside of the relevance of other topics of
10 discussion today I am concerned and find it hard to believe
11 that one individual or designee could avail themselves to be
12 in attendance to address or participate in this hopefully
13 problem solving forum. This clearly does not give the
14 impression that they are concerned about the issues that are
15 important to those involved in this process especially
16 parents."

17 I want to clarify that CED is present. Jim Bilotti
18 and Shane Burley are both here in the audience who are our
19 contract monitors. When I mentioned at the start of our
20 meeting that I didn't have somebody from Compliance complaint
21 department here to address the intersection between OAH
22 issues and Compliance issues -- that's who is not present.
23 But CED has been here present throughout the entire meeting.

24 CHAIR STEEL: Steven.

25 MR. WYNER: My comment's probably a little further
26 than the agenda but I think the underlying issue that you're

1 raising is one of confidentiality. And whether what happens
2 in mediation is confidential and will remain confidential and
3 we all know that there are provisions in both the government
4 code and evidence code that do provide that alternative
5 dispute resolution mediation before OAH is completely
6 confidential and nothing that you write there and nothing
7 that you say there can be discovered.

8 I happen to be defending a family against a school
9 district who has issued multiple subpoenas duces tecums on a
10 prior school district to produce an OAH mediated settlement
11 agreement that my client entered into with that other school
12 district. So that the school district in the hearing can
13 introduce the prior settlement in order to prove that it has
14 no liability. That school district has gone so far as to
15 file a writ of mandate in Orange County Superior Court in
16 which they actually published the entire due process
17 complaint having simply redacted out the name of the child
18 and his or her address.

19 So whether or not one judge walks down the hall and
20 says you know, I heard about this or I heard about that,
21 we're about to see the entirety of what is going on before
22 OAH become public. Because school district lawyers think
23 they can rely upon a litigation privilege to publish a
24 confidential due process complaint and seek to discover a
25 mediated settlement agreement.

26 Frankly I think OAH should intervene in the

1 proceeding because under the most recent case out of the
2 California Supreme Court Simmons and Gutierri on the
3 confidentiality, nothing that is confidential in mediation
4 can be disclosed unless all of the participants to the
5 mediation waive the confidentiality in writing. And since
6 OAH was a participant in the confidential mediation
7 proceedings and has not signed a waiver their rights are at
8 stake to prevent this type of activity.

9 CHAIR STEEL: I have two comments from the web.
10 One of them says "As an unrepresented I am unclear. Do
11 confidentiality laws apply to mediators and ALJ's in
12 mediation or does it solely apply to parties involved?"
13 That's the question.

14 And then the second is "How useful is it to discuss
15 the problems with mediators for a committee whose purpose is
16 to make recommendations to OAH where mediations come from?
17 That issue would need to be taken to CDE. Let's move on."

18 Any other?

19 MS. VANAMAN: No. I'm not sure I agree that it has
20 to be taken to CDE. OAH could say we're finding it difficult
21 to do both roles with both people and we'd like to look at
22 it.

23 It isn't a question of confidentiality. We're
24 talking about the same exact person. Valerie Vanaman ALJ
25 hears all this stuff on Mon -- on Tuesday and three weeks
26 later she's hearing about the same case. I don't care how

1 good the person is they can forget in terms of judging
2 credibility or anything else what they've heard in another
3 context.

4 MR. MCIVER: Yeah. Again you're absolutely right.
5 We can be pretty well assured that people aren't going to
6 talk about confidential matters and they won't write about
7 confidential matters but they can still think. And that's
8 got to influence all of their work subsequent to that.

9 CHAIR STEEL: So the recommendation -- I mean is it
10 -- is there a recommendation to make them separate? That's
11 where -- is that --

12 MR. MCIVER: Yes.

13 MS. VANAMAN: I say (inaudible).

14 CHAIR STEEL: OAH?

15 JUDGE LABA: I urge that that be done.

16 MR. WYNER: My experience over the course of time
17 and it's not as wide as Valerie's is that the procedure that
18 we have now with Administrative Law Judges serving as
19 mediators is far more effective and I understand what you're
20 saying.

21 People can't help but hear what they hear and they
22 can't help react to it but that's why they're judges. That's
23 -- they're supposed to be able to judge the evidence that's
24 before them. And I don't think that there's anything that
25 would stop an ALJ who heard something that was contrary to
26 the testimony from being given in a particular hearing -- I

1 don't know that there's anything to stop the judge from
2 asking a witness that isn't it true that you have seven
3 people filing Worker's Comp claims?

4 MS. VANAMAN: And if I'm the attorney in that case
5 and don't know that that mediation happened three weeks ago
6 and that I'm going to have to deal with that kind of
7 advantage -- I mean how is that fair to me or my client?
8 Come on, Steve.

9 CHAIR STEEL: So Judge Laba I know we had a
10 question but we wanted you to answer it -- regarding do
11 confidentiality laws apply to mediators and ALJ's? I think
12 it's best for you to answer that and not just to the parties.

13 JUDGE LABA: Yeah. The confidentiality rule
14 applies to everybody attending the mediation. It even
15 applies to me when I'm observing the mediation. We don't
16 talk about them at all. And we seal all documents.

17 CHAIR STEEL: Okay. Any other comments? Okay.
18 We're going to go back to "Should a pamphlet be created and
19 distributed to parents?" And this is regarding access to
20 information about OAH. Do we want to go back to that
21 question?

22 MS. VANAMAN: Where were we?

23 CHAIR STEEL: What information would be in that
24 pamphlet? I think that's the --

25 MS. VANAMAN: I thought Jonathan said we were going
26 to do that next time and we were going to look at the

1 pamphlet that was done.

2 CO-CHAIR READ: But the parent handbook Section F
3 was what we tabled.

4 CHAIR STEEL: So we should table that with that?

5 CO-CHAIR READ: And then I guess the pamphlet issue
6 is the same as Section F?

7 CHAIR STEEL: Okay.

8 CO-CHAIR READ: There's two. There's a bullet
9 under G. The last one. And then Section F. If they're the
10 same thing I think we can just table it.

11 CHAIR STEEL: Okay. The next question is "What is
12 the progress of the joint legislative audit committee for
13 OAH?" Do we know the status?

14 JUDGE LABA: The Bureau of State Auditors is in the
15 process of auditing both OAH and CDE and I checked with CDE
16 this morning or this afternoon and it's our understanding
17 that they're still in the data collection process. And the
18 last that we heard that they expect the report to be
19 issued -- and it might be the preliminary report -- the
20 preliminary report to be issued sometime in December. But
21 again those dates could change and go on but they continue to
22 collect data at this point. I don't know when their final
23 report would be released if the preliminary is in December.
24 So I don't know how that process works.

25 CHAIR STEEL: Judge Laba, can you define the
26 legislative audit? Because not everybody knows what that is

1 and can you just define what their auditing?

2 JUDGE LABA: I'm going to go off the top of my
3 head. Okay? So there was -- the legislature asked for an
4 audit of CDE and OAH with regard to particular topics such as
5 timeliness of decisions, use of funds -- I haven't seen the
6 list in a really long time. I'm trying to think of the kinds
7 of questions asked. They looked -- they've looked at our
8 data report, they looked at our files, they looked at the
9 timeliness of cases being opened, they are comparing our data
10 to SEHO data to see how they measure up. They looked at the
11 training, CDE's oversight -- I'm getting help from the
12 audience here.

13 CHAIR STEEL: That's fine.

14 JUDGE LABA: There's a variety of topics. Is it
15 Senator Correa? Senator Correa was the one who backed the
16 request for the audit and so that information went from him
17 to the Bureau of State Auditors. And then they come to us
18 and ask for certain information. They go to CDE and ask for
19 certain information. So the topics they ask us for
20 information on may be a little bit different. So there's a
21 variety of topics they're looking at.

22 CHAIR STEEL: Will it be posted?

23 JUDGE LABA: I -- Matt, are these published on
24 BSA's web page? Yeah. Eventually. Again, we just don't
25 know the time line because it's a Bureau of State Auditors
26 and I know that their publications are released and it will

1 certainly go to the legislature if they're the ones that
2 asked for it. But until we actually get some kind of report
3 from them I don't know what the parameters are. Who posts it
4 exactly? I don't know who will be required to post it. If
5 CDE will be required to post it or it just goes on the BSA
6 audit -- on the BSA page.

7 CHAIR STEEL: Okay.

8 JUDGE LABA: I'm sure they might -- if you called
9 them they could probably give you more details. Any other
10 questions about that?

11 CHAIR STEEL: Last question. Thank you.

12 JUDGE LABA: I have to stay up for this one, too,
13 don't I?

14 CHAIR STEEL: We are concerned over staffing. I
15 think Cecelia --

16 MS. CHANG: I was just looking at the
17 organizational chart of OAH and see that like five out of ten
18 positions are still vacant in Laguna Hills and other offices
19 as well. So what's the plan to --

20 JUDGE LABA: Well, you have to remember that we
21 don't look at each office individually. For the Special
22 Education we look at ourselves as a Division. We are a pool
23 of judges and we staff up in the areas that we can staff up.
24 It's been much easier to staff up in the Sacramento area for
25 a variety of reasons including cost of living, what the State
26 pay rate is, etcetera.

1 But no one judge even though they may work in
2 Laguna Hills and that's where we allocate their resource to
3 that office -- if I needed that judge in Van Nuys for a
4 hearing at L.A. Unified or if I needed a Sacramento judge in
5 San Diego, we would send that judge where the need is to hear
6 the case or do the mediation. So our judges regularly
7 travel-- all of them -- anywhere throughout the State of
8 California where the need arises to have somebody present.
9 So instead of looking at each office individually and saying
10 oh, well, they're down five and they're down six, we use our
11 resources as a pool and instead look at the Division as an
12 overall as to how many people we have available.

13 And right now we are trying to make some additional
14 hires specifically out of the Van Nuys office. However if
15 you aren't aware of the budget and State woes with regard to
16 that, there is a Governor's order -- an Executive order that
17 was issued back in July I believe that puts a freeze on any
18 new hirings or promotions or anything like that. So we have
19 to go through an exemption process in order to get new judges
20 hired. We're doing everything we can to get through that
21 process and to make offers of employment to new judges. Then
22 of course they'd have to go through a training program and
23 everything else so even if we are able to get the exemption
24 and hire these judges -- let's say we did it next week.
25 We're not even that close yet but let's just say we did. It
26 would probably be late December or early January before

1 they're trained up enough in order to be able to conduct a
2 hearing. And probably longer for mediation given the
3 availability of mediation courses.

4 So we do operate, like I said, as a pool. And we
5 have the resources available to cover things throughout the
6 State. We also maintain a large pool of what we call pro tem
7 judges. They don't do hearings. They only do mediators --
8 mediations. Several of those judges are former SEHO
9 mediators. Not so much in Southern California. More so in
10 Northern California. But all of those pro tem mediators go
11 through the same training program that we put our judges
12 through to ensure that we have consistency in training.
13 Okay? So we have those available to fall back on if we find
14 that we're in a busy time of the year.

15 We are finding that filings are down. Last year
16 they were about five per cent down. This first quarter of
17 this year they're about another six per cent down over what
18 they were last year. So we do have sufficient staff to
19 address the needs of mediation and hearing. We have never
20 had to say to somebody we don't have somebody to send you.
21 And we will continue to work in that direction. Okay?

22 CO-CHAIR READ: If I could -- I'm sorry. I just
23 wanted to make a -- you don't need to answer this -- a quick
24 point that I forgot to make during the discussion of
25 mediation. What I found effective in mediation is the
26 availability of mediators after the scheduled mediation to

1 follow up on issues once the parties have some breathing
2 room. One concern with having judges do that is if they're
3 moving right to a due process hearing they're not available
4 for that follow up. So I would make that request regardless
5 of the outcome.

6 MR. MCIVER: Yeah. I agree. That was one of the
7 benefits that we got many after hours calls from mediators to
8 try and further the process and I've not experienced it with
9 ALJ's being willing or able to do that.

10 MS. VANAMAN: Could we go back to the calendar
11 issue we started the morning with? Is there some -- because
12 I don't quite understand the purpose of this Advisory body
13 but is there some response that we can get from OAH about
14 what's going to happen with our concerns with regard to the
15 calendaring? Because that's a real immediate issue.

16 JUDGE LABA: Our plan was -- because it's our first
17 meeting. We don't -- we didn't have anything to respond to
18 begin with. Our plan was to get all of your feedback.
19 Jonathan was going to email or some form get me the -- hand
20 them to me even today -- I will type those up and have those
21 ready for the Northern California committee who meets next
22 week on Wednesday. Once I have their input then we'll have a
23 way to address any concerns.

24 Certainly if there's something that's been
25 recommended that we can implement right away we'll certainly
26 do that. But we'll need to meet again with all of you to

1 have discussions especially about those areas where we can't
2 make a change for some reason or we need more information -
3 something like that. We'll need to have further discussions
4 with you. So when we plan for the next meeting we need to
5 think about the time frame and all of that. What it might
6 be.

7 MS. VANAMAN: Is it possible to get -- to get OAH
8 to -- today to really acknowledge that perhaps there are some
9 concerns that when counsel on both sides share them about the
10 need for a continuance that shouldn't just be denied
11 automatically? That there really ought to be some looking at
12 that and even if it is the second continuance?

13 JUDGE LABA: Well, we certainly want to be able to
14 schedule these that fit everyone's schedule within the same
15 parameters that we have to maintain. And you're not the
16 first person that's raised a concern about a particular case.
17 Certainly if you have a concern about a particular case I'd
18 like to hear about that, you know, outside of this meeting
19 with the case number so I can address if it's coming from a
20 particular judge or if there was a confusion about something.
21 Something like that.

22 But there are -- there is no perfect system when it
23 comes to calendaring. Not everyone's going to be happy with
24 whatever we come up with. So we do want to address that.
25 That's why we put it first on the agenda is we do recognize a
26 need to make it more workable for everybody. And one of the

1 concerns is why do I get it in one case and not the other
2 case, etcetera? So --

3 MS. VANAMAN: But I think it's a matter of trust.

4 JUDGE LABA: But I don't know what your question
5 is, Valerie.

6 MS. VANAMAN: Well, my -- I think that as a
7 systematic matter when parties are putting in joint requests
8 for a second continuance those are being denied. And I don't
9 think it's a particular case I just think it's this -- that
10 you guys have decided we're going to just deny them.

11 And I think that if both parties are represented by
12 counsel -- and again it comes back to this flexibility issue
13 -- but if you're both parties represented by counsel, neither
14 side is taking advantage of the other. They indicate to you
15 that we really need this time in order to do X or Y, you all
16 need to have a little trust in us that we're not trying to do
17 this to screw up your calendar. We're not trying to do it to
18 make your life difficult. We're not going to make a
19 complaint to the Feds that you didn't do something in 45
20 days. We're doing it because it really is in the best
21 interest of everybody concerned. And it's that feeling that
22 you don't trust us.

23 Now if you -- if you saw somebody that was
24 regularly taking advantage of the system -- whatever --
25 obviously you have to act and you have to do whatever but if
26 you get it from people in a case who honestly say we really

1 do need to do this, it just doesn't seem -- it's a -- it
2 makes us feel -- we're not children. We really aren't. And
3 it makes us feel like you think that we can't make sound
4 decisions and you somehow have to control our decision making
5 and we pretty much are making sound decisions when we make
6 those requests. I mean we really are not children.

7 JUDGE LABA: I think I can speak for myself and the
8 other PJ's who are all present here today. That is not what
9 we think at all. You know, we do value your opinions and we
10 do trust that you're making the right decision for your case.

11 Again it's anecdotal information. It's not -- what
12 you're reporting to me is not what I see happening with the
13 cases. So I need to do some more research. Because it's my
14 understanding that when people can agree and they need to
15 move the dates that that's happening. But again I'm -- it's
16 anecdotal information from both of us. I'm telling you it's
17 happening. You're telling me it's not happening. So I need
18 to go back and do some more research but I can assure you all
19 four PJ's are here.

20 PJ's are the ones who rule on those requests for
21 continuance. So they're all hearing exactly what you say
22 firsthand here today. And we certainly do trust what you
23 guys decide to do with a case and as long as we have evidence
24 that that's what you're doing -- you know, if you've got to
25 do assessments and you need time for that, etcetera. We want
26 you to be able to work out these cases without a hearing.

1 That's the goal of due process.

2 CHAIR STEEL: So now we're going to open it up. We
3 had some issues so, Jonathan, do you want to go through --

4 CO-CHAIR READ: Sure.

5 CHAIR STEEL: -- that were in the agenda that may
6 have been -- that can be addressed? Then we want to open it
7 up to the public for any other additional issues that need to
8 come up. That weren't on the agenda that need to be
9 addressed. I know there were a couple. Jonathan.

10 CO-CHAIR READ: We had agreed to leave an hour at
11 the end of the agenda for dealing with other issues. So I
12 think what we'll do is just start the hour now since we've
13 gone through the agenda.

14 MR. WYNER: Can we take a short break?

15 CHAIR STEEL: Yeah. Did you want -- yeah, let's
16 take a short break and then we'll start with open session.
17 Hold that thought.

18 - - O F F T H E R E C O R D - -

19 CHAIR STEEL: All right. We're back. And so we're
20 going to open up. We're going to -- there's some comments
21 and then we're going to open it up for public comment and
22 discussion and so -- and so we have another item, too. We
23 have to schedule. So we have a couple issues we want to do.

24 CO-CHAIR READ: All right. I think Stacy was on
25 the podium.

26 CHAIR STEEL: Right. So go ahead.

1 MALE: Okay. I -- all right. Shall I do my issues?

2 CHAIR STEEL: Yes. I will. You know what? Let's
3 get through these that are waiting. The email ones. And
4 then I'm going to have Jonathan do the one that was actually
5 on the agenda just to clarify those and then you're first up.
6 Does that sound good? All right.

7 My first public comment is "I would suggest that
8 some sort of yardstick be used to measure the objectivity of
9 rendered decisions. Perhaps an automatic audit can be
10 activated if the statistics indicate a sway of 20 per cent or
11 more in either way. Very recently the statistics stood at
12 the student prevailing in only about three per cent of the
13 cases. This is a clear indication that something is not all
14 right."

15 JUDGE LABA: Okay. I have several from the
16 webcast. The first is "The pamphlet issue is somewhat
17 separate from the parent handbook. As for consideration for
18 distribution of the pamphlet to simply provide minimal data
19 to parents, caregivers of OAH's existence and basic
20 operations to be an avenue for parents to travel leading to
21 the handbook."

22 And it think that's how it was envisioned in our --
23 we have -- we are preparing two things. One is what we call
24 a consumer guide and that's really like a trifold pamphlet
25 and that's just a handout that districts can have present.
26 And whether or not they should be handing them out at

1 IEPs -- we can't force them to do that obviously but maybe
2 it's a suggestion we can send when we send the pamphlets out
3 to school districts. But the parent handbook is something
4 separate.

5 CHAIR STEEL: Can you send those to also all the
6 legal services organizations?

7 JUDGE LABA: Absolutely.

8 CHAIR STEEL: I mean that's just --

9 JUDGE LABA: Absolutely. We haven't published that
10 yet. It's with our Public Affairs Department. We have a
11 draft that they're putting -- they're going back through in
12 order to revise into common language. And we'll bring it
13 back to you in order to approve the language and make sure it
14 sounds okay to everybody. And then we want to be able to
15 make sure it goes out by July of next year. Yes?

16 MR. LEVIN: Once it's approved if you give us
17 copyright permission we can put it in our annual
18 notifications.

19 JUDGE LABA: Okay. I don't know if that's possible
20 but I'll let you know.

21 MR. LEVIN: Okay but we could just put it right in
22 there.

23 JUDGE LABA: Okay. The next question is "Can or
24 will the OAH support staff assisting pro per parents have the
25 knowledge to assist parents in completing forms, subpoenas,
26 etcetera in those cases where the school district is not

1 acting in good faith?"

2 Yes and no. If it verges on legal advice our
3 support staff cannot give you legal advice. But we are
4 coming up with different ideas and we'd love to hear from you
5 about ways that we can either partner with a law school or if
6 there's a clinic out there we can refer this or some way
7 where they can get a little bit more legal advice than we can
8 give them in our office. But we certainly do everything we
9 can to point them in the direction -- for example with a
10 subpoena. We're going to point -- say here's how you get the
11 form, here's how you fill it out. Send it to us. We'll sign
12 it for you and then you have to follow these rules in this
13 code in order to serve it. So we do everything we can in
14 order to help them through that process. But we do have to
15 walk that line between being the neutral decision maker body
16 and giving legal advice.

17 Next question was "How are parents notified of this
18 meeting? All Special Ed parents should be notified about
19 this Advisory meeting."

20 We publish it on our website. We send it out to
21 everybody that we can think of. I don't know if it did this
22 time because I don't know if we got permission from everybody
23 but if you're on our ListServe I think that would be a good
24 way to distribute it to everybody as well. We should --
25 school districts know about it because they're -- it's on our
26 website. Hopefully they're notifying parents. I -- any

1 recommendations you can come up with as to how we could get
2 as many people involved in this process as possible please
3 let me know. I mean if it's a matter of emailing a flyer to
4 everybody -- because I always let the SELPA committee know.
5 So they know about when it is.

6 So anything that we can do to get the word out. We
7 will always publish the date and time at least two months
8 ahead of time on our web page. So that information's up
9 there. But if you have recommendations for other ways to get
10 the word out please let us now what those are.

11 Next question was "Can the webcast be close
12 captioned?" The webcast will be available on our website.
13 If you at your leisure -- and it will have close captioning
14 available to it at that time and that way parents who need
15 that option will have it available to them. It will take us
16 about two weeks or so to get it up on our website because it
17 will have to be next week's meeting as well. But if you want
18 to go back and view it, you're not sure what was recommended
19 or you just want to view another topic or you think this --
20 if you weren't able to stay for the meeting or you're at home
21 and you're on the webcast. You can watch the whole thing.
22 It will be archived on our web site. You'll be able to view
23 the entire thing.

24 Concerning the agenda items that were tabled today.
25 The question is "until when?" and I think we're going to be
26 talking about scheduling meetings after the public comment

1 period. So we'll be able to address that.

2 And the last comment I had from the public is
3 "Please thank all panelists for giving their time to be at
4 the meeting today. Thank you to OAH for responding and
5 presenting. Thank you to CDE for being in attendance, too.
6 It is nice to see a group of individuals get together to
7 discuss such an extremely important issue as Special
8 Education and how it impacts our children."

9 CHAIR STEEL: Thank you. Jonathan?

10 CO-CHAIR READ: Okay. There were just a few issues
11 that I was asked to bring up and I'm not sure they require
12 much discussion. One was when transcripts are available
13 after a decision usually in the context of an appeal. OAH
14 has been providing transcripts on paper. SEHO had gotten to
15 a point where they were providing the transcripts on paper as
16 well as on disc which saves a ton of time in litigation --
17 being able to do word searches and things like that. So
18 their quest is to provide transcripts on disc as well as
19 paper.

20 And there was an issue -- I believe this was
21 brought on by Northern California about the availability of
22 electronic and/or digital copies of decisions. Perhaps that
23 was subsumed within our discussion of the search engine on
24 the web site. So unless there's further comment on that I
25 would just defer to the Northern California meeting to
26 discuss that further.

1 And that's it. Stacy had a question.

2 CHAIR STEEL: Stacy.

3 "STACY": I'm an attorney for school districts but
4 this is a dilemma I think is on both sides and I'm trying not
5 to seek a legal opinion so I'd like you to know that.

6 As you know, when a child turns 18 that is an
7 individual with exceptional needs, that child receives their
8 educational rights. It transfers from the parent to the
9 child. That child may have a category of mental retardation
10 as their disability. What I have come across is the
11 difficulty in the law of locating capacity to contract when a
12 child may have a disability such as mental retardation. Can
13 that child -- well, that child has the rights and so you look
14 at if that child's going to exercise their rights -- their
15 ability and capacity to exercise their rights and their
16 ability and capacity to transfer those educational rights.
17 Those are complications in my mind where the child may not
18 have the capacity to understand what they're doing if they
19 transfer their educational rights and may not also understand
20 all their educational rights in asserting them for
21 themselves. And so I'm wondering how all of you handle this
22 issue. Because I -- I have difficulty -- and I think both
23 sides of the bar if you will have difficulty in this.

24 MS. VANAMAN: I think this is an issue that has
25 been created that doesn't exist. California law is very
26 clear in the Welfare and Institutions Code and in the Probate

1 Code as to what's involved if a parent or some other aid
2 person -- any person -- files for a conservatorship of an
3 individual. They file if they are developmentally disabled
4 for a limited conservatorship. If that in fact does not
5 exist California presumes capacity on the part of the
6 individual. Federal law and State law recognize that
7 presumption of capacity and should that individual give to
8 their parent the right to make educational decisions for them
9 unless the district is going to move from referring kids to
10 DCFS up to referring to the Adult Protective Services, in
11 fact I think that is something the school district has to
12 honor if that decision has been made. Whether or not you
13 think the person has capacity. Now if the school district
14 wants to get in the business of filing a whole batch of
15 limited conservatorships saying we don't think the individual
16 has the capacity to make it so we're going to go to court to
17 get a decision on that -- you know, I guess it's bad economic
18 times. There can now be a whole other group of lawyers who
19 get involved in having to represent families with regard to
20 that. It will be an interesting question who's going to pay
21 for that if the school district's the one who initiates the
22 proceeding. The California law is very clear. It is very
23 clear. Unless conserved the individual is presumed to have
24 capacity and if that individual signifies in any way, shape
25 or form that the parents have the right to make decision
26 making they have it.

1 Secondly, and what's really important for districts
2 to remember is that Federal and State law both specifically
3 provide that if the individual is over the age of 18 but not
4 conserved any notices of IEP meetings must be sent both to
5 the parents and to the individual student. You cannot simply
6 do what some districts do which is give the kid notice, bring
7 the kid and have him sign something and then be done with it.
8 The Federal law and the State law both require that notice of
9 IEP meetings -- conserved, not conserved -- capacity, not
10 capacity -- be given to the parents as well as the student.
11 It's done as a specific protection. I think that school
12 districts need to -- in my opinion school districts need to
13 take a very hard look before they decide that they're going
14 to try to make capacity decisions which have been by law
15 given to our Probate Court system.

16 "STACY": I agree. I know under the Probate Code
17 that's what it states but I've seen a just fluctuation of
18 knowledge base out there and so I just wanted to raise that.
19 Thank you.

20 MR. MCIVER: This is an issue we deal with in
21 Mental Health all the time. Not so much with Special Ed
22 students but with Child Welfare dependents and Juvenile
23 Justice dependents and one of the things I harp about with
24 the other public agencies is that, you know, kids are going
25 through a lot of changes. The one thing that doesn't change
26 is their birthday. And we get umpteen requests to do

1 something on an emergency basis on the eve of the 18th
2 birthday of the patient. And kids with disabilities -- they
3 had them probably well before their 18th birthday and if
4 parents or their counsel or anybody else wants to try to
5 initiate some legal proceeding in the area of conservatorship
6 whether full or limited you don't start that on the 18th
7 birthday. You start that well in advance.

8 CHAIR STEEL: Yeah. Two questions. Two comments.
9 One of them is that "That's what transition plannings are
10 required to have. At 17 there's supposed to be some
11 discussion."

12 So if there isn't a discussion and it isn't some
13 plan of action then that's a whole other district violation
14 because you shouldn't be waiting until that district has been
15 filed against to go 'oops, this is a problem.' So I mean
16 that's one issue.

17 Also is in I guess the question goes back to OAH is
18 that how is OAH being, you know, involved in these. I mean
19 are these an increase of cases? I think we've seen an
20 increase of cases where --

21 MS. VANAMAN: Yeah. We've got an aging population
22 and we've got a group of kids who are really pretty high
23 functioning and there are no programs that exist for them.
24 So the litigation that's going to occur between the age of 17
25 and 22 is going to be greatly increased over what it used to
26 be.

1 And I think -- Janeen, I'm sorry to interrupt you,
2 but I just -- I'm on my hobby horse on this one because I've
3 just been through this. An OAH -- at least in the few
4 encounters I've had so far I'm not thrilled with the -- what
5 I'm getting which is well, don't you have conservatorship? I
6 don't think a parent has to go get conservatorship. There is
7 a form that Protection and Advocacy has on its website --

8 CHAIR STEEL: Uh-huh.

9 MS. VANAMAN: -- which is a transfer form. It's
10 been carefully researched by Protection and Advocacy. In
11 fact, I think it is a form that works. I think it complies
12 with the law if the individual is going to give authority and
13 I think OAH has frankly no business to get in the capacity
14 business either. If the parent's sitting there -- the
15 parent's got the authority from the individual to make the
16 decisions. I think it inappropriate for OAH to say you
17 better bring the 18-year old here.

18 CHAIR STEEL: Okay. There's a few comments here.
19 Any other? A suggestion of how to get the OAH meetings to
20 the public -- send a flyer to the newspaper editors for
21 possible publication.

22 Next comment. "I urge OAH to require school
23 districts of their Special Education population to send a
24 notice home to their parents. Example -- Office of Monitor
25 does this with public hearings every year. Notices go out to
26 parents before the hearing."

1 "Development and implementation of a certificate
2 program for advocates was not on the formal agenda. Did the
3 panel feel this was not the right forum to discuss this? I
4 do believe it needs to be discussed."

5 MR. LEVIN: Okay. I was going to -- I brought up
6 about certification of advocates and I think it would be best
7 if we held off on that until we go through the parent
8 handbook and see where we can put it. I don't want to give
9 it up and I would like to do it for the next meeting because
10 I really feel passionately about that.

11 CHAIR STEEL: Okay. Other?

12 CO-CHAIR READ: Is Mr. Lackey here?

13 CHAIR STEEL: Is Mr. Lackey here? Okay. Any other
14 discussions? Comments?

15 MR. BILOTTI: Good afternoon, I'm Jim Bilotti with
16 the California Department of Education. First of all I want
17 to thank each and every one of you. It was really great to
18 get input regarding how to really improve due process and
19 mediation process here in California so this is a good
20 beginning step.

21 CHAIR STEEL: Mr. Bilotti, can you go a little
22 closer to the mike?

23 MR. BILOTTI: There is a question here that came up
24 and I'll read it. "Can a representative from the Compliance
25 Office address or speak to the issues, concerns and questions
26 that have been raised during the meeting that are contingent

1 on their enforcement of the law particularly on the records
2 issues, the issue of a district's failure to provide parents
3 with educational records, contradictory compliance,
4 investigation decisions being issued on who can request
5 educational records and focused monitoring enforcement of
6 corrective actions regarding the same." Well, that's a lot.

7 First of all I want to try to separate -- and it's
8 very confusing -- separate due process and mediation from
9 part of compliance. As a Department of Education we receive
10 compliance complaints. It goes through our Procedural
11 Safeguards and Referral Services Unit. If warranted a
12 complaint investigation is opened. It's basically a
13 procedural issue. Most of them if you look at the statistics
14 are failure to implement the individualized education
15 program, the IEP. But there are a lot of other issues --
16 missing timelines, etcetera. As a result of that there
17 are -- there's an investigation that is conducted. By law it
18 needs to be completed within 60 days. That investigation
19 generates a report that may in fact result in some findings
20 for a school district to resolve.

21 The way our Division -- the Special Education
22 Division in Sacramento under the California Department of
23 Education -- is organized we have five separate monitoring
24 entities. They're called Focused Monitoring Technical
25 Assistance Units. Once the complaint investigation is
26 completed and if there are some findings that need required

1 corrective actions then the particular Focused Monitoring
2 Technical Assistance Units that have the responsibility for
3 that particular geographical area where the school district
4 is located, is responsible to ensure that that school
5 district does in fact resolve the required corrective actions
6 within a specified period of time.

7 If that isn't done we do have an end process. We
8 have in regulation we can go through some resolution that has
9 some fiscal penalties in that regard.

10 Now on the other side of the fence from our
11 complaint investigation is in fact what the Office of
12 Administrative Hearings does and that is due process and
13 mediation. If you go through a due process hearing and in
14 fact you do have a finding -- we received a letter from the
15 United States Department of Education, Office of Special
16 Education Programs. It was a letter that basically said OSEP
17 does not have any proscribed way in how the compliance is to
18 be adhered to. We have -- in fact each individual state can
19 make their own decision on how to ensure compliance as a
20 result of a due process hearing decision. In California the
21 way we are interpreting that and following up on that is our
22 Focused Monitoring Technical Assistance Units will then in
23 fact get those decisions and then ensure that those
24 determinations that have resulted as a result of an OAH due
25 process decision are met by the school district. So again I
26 just want to clarify. We have sort of two systems here. But

1 our Focused Monitoring Technical Assistance Units does get
2 involved first of all in procedural safeguard compliance
3 issues, complaints and separately for any decisions that come
4 as a result of a due process hearing where there are findings
5 against the district and the district has to take some
6 affirmative action to rectify the matter.

7 CO-CHAIR READ: Can I ask a question about that?
8 Traditionally when we've talked about enforcement of due
9 process decisions if there's been a dispute somebody might
10 file a compliance complaint saying that a due process
11 decision was not implemented. Are you saying that because of
12 the letter from the U.S. Department of Education, CDE is not
13 going to be waiting for a complaint and will be independently
14 reviewing decisions and on its own making sure that they're
15 complied with?

16 MR. BILOTTI: Well, I want to be real clear here.
17 First of all to get to the question, the letter that came out
18 of OSEP basically stated that OSEP has no preferred position
19 on how this is resolved and it's up to the SEA -- the State
20 Education Agency -- to take that step. In California that
21 means that the Special Education Division through the Focused
22 Monitoring Technical Assistance Units will in fact take these
23 decisions from OAH and when there are determinations follow
24 up to ensure there is compliance. In that regard the answer
25 to your question is yes, we will do that. We have worked
26 with the Office of Administrative Hearings like you have

1 received to receive all copies of decisions that are rendered
2 by OAH. Each one of our Focused Monitoring Technical
3 Assistance Units receive those so when they're in that
4 particular area they'll have -- they'll have a menu so to
5 speak -- an action so to speak -- to ensure that those
6 matters are resolved as a result of those due process
7 hearings. Does that answer your question?

8 CO-CHAIR READ: Yeah. And I guess the second part
9 to that is, is their review going to be limited to the -- I
10 guess the four corners of the order? Or are they going to
11 review decisions and decide to take on additional issues that
12 they might find.

13 MR. BILOTTI: I -- my understanding -- I want to
14 preface it's my understanding -- is that they're going to
15 specifically be limited to the actual order. That doesn't
16 mean however that we as a practice of our overall general
17 supervision requirement -- if we see patterns then we can act
18 independently on the patterns. But in response to your
19 particular question we will be focusing in on the actual
20 order and the resolution of that.

21 MR. WYNER: Mr. Bilotti, are you saying that
22 someone actually has to file the complaint with you? With
23 the CDE in order to get CDE to make sure that the decision is
24 being implemented?

25 MR. BILOTTI: No. What I'm saying is that there
26 are two separate processes. There is the compliance

1 complaint that we handle. And then separately with respect
2 to due process hearings, once we receive a decision that
3 requires some sort of action to be taken by a school district
4 -- a finding against a school district then we have the
5 responsibility to ensure that the school district complies
6 with that order.

7 MR. WYNER: I have some experience in dealing with
8 this particular issue and was involved in the Ninth Circuit
9 decision. I think it's important because this is being
10 broadcast publicly for parents to understand that going to
11 the CDE is not the only remedy.

12 MS. VANAMAN: Nor is it required.

13 MR. WYNER: Nor is it required in order to get
14 enforcement of a due process decision. Just as a side note I
15 know I got a decision in a couple of cases -- one in March of
16 -- March 17, 2008 -- that the Redlands School District
17 completely refused to comply with and violated two State
18 (inaudible) orders and an OAH decision. I never heard boo
19 from the CDE. And I didn't know that you guys were supposed
20 to be looking at whether or not the districts are actually
21 complying with it. But I can tell you that I think that this
22 is one of the biggest problems that I've seen in the law is
23 that you can go through years of litigation, you can win that
24 litigation, you can get an OAH order directing a school
25 district to provide after school tutoring, ADA services,
26 whatever, and the school district simply says oh, we really

1 can't find anybody to do that.

2 MS. VANAMAN: And because there's no enforcement
3 from the State Department of Education they don't feel the
4 need to do it.

5 MR. BILOTTI: Okay. Well, I will -- I will say is
6 I can't speak for the past. I'm saying this is our present
7 practice.

8 MR. WYNER: I just settled that case last week.

9 MS. STEVENS: Kristin Stevens, parent, again. This
10 brings me to a point someone texted me on. And it's hard for
11 CDE to know that their systemic problems if we're gagged in
12 our settlements and it's a problem because as I understand I
13 was told it's illegal to gag these settlements. There's a
14 problem if there's a systemic problem in school districts and
15 their attorneys know it and then yet the force parents
16 through these -- if you're going to get your settlement you
17 have to be gagged and you're given excuses of well, it stops
18 other frivolous lawsuits.

19 Well, I'm sorry but if everyone who touches
20 somebody's parents' settlement -- family settlement -- in the
21 school district they're not gagged. The only one that's
22 really gagged seems to be the parent. So it seems to be a
23 rather worthless thing to be enforcing and especially if it's
24 a systemic problem.

25 I have one of the kids who -- you're Janeen Steel?
26 I had -- my daughter went through that. You know, tried to

1 label her a certain classification when she never was. And I
2 know that you went and -- I don't want to say fought -- went
3 to court for a group of foster kids. I had to do it for my
4 child because we faced the same situation and it's the same
5 district. It's systemic and the only reason I found out it
6 was such a big deal is because another parent let me know
7 about it. And luckily she had gone through and gone through
8 a similar situation, was not gagged, wouldn't allow it
9 because she went pro se and they just -- she just wasn't
10 going to sign any kind of a gag order. But it just -- it
11 comes down to if CDE is not going to be made aware of these
12 because of the gag orders then it really -- there's no
13 enforcement by CDE in the first place. They're not going to
14 know that anything's going on. Maybe they can do something
15 about it. I'm not really sure. I'll find out.

16 Another -- I have a suggestion as far as -- in
17 terms of the goal writing for some of these disputes --
18 there's disputes over the goals. I mean my kid had goals as
19 bad as she will know beaches. She will not whine. Now I'm
20 sorry -- they're so egregious and so poor that if a parent
21 calls OAH I think you should have someone come down and teach
22 these people how to write a goal. You could eliminate a
23 whole lot of this. Well, maybe not a lot of it but a good
24 number of the disputes that families are having. I mean
25 granted there's other things that are procedural but the
26 goals that I see written on student's IEP's are so stupid.

1 Anyway, thank you.

2 CHAIR STEEL: Thank you. I have a comment from the
3 web. "VMRC" -- the regional center? -- "VMRC does not
4 recommend conservatorship and does -- and medical profession
5 does not recognize conservatorship but both accept power of
6 attorney." Are there any other comments or questions?

7 All right. Well, I'd like to -- there's a few
8 housekeeping issues. We have to plan for our next meeting. I
9 think the process is we're going to get over the notes from
10 the meeting to Judge Laba and you plan to email all of us if
11 you're going to put it together.

12 CO-CHAIR READ: Sure.

13 CHAIR STEEL: And then we have to pick another date
14 and then first before I forget I want to thank OAH Office of
15 Administrative Hearing Judge Laba, CDE for being here as well
16 as everybody on the committee for being here and being so
17 vocal and being patient with our first meeting because I
18 think it's really exciting. Also make sure that we thank
19 Roberta Savage for really gathering the information and
20 putting the agenda together. I appreciated her help and
21 support doing that as well.

22 So the next meeting and I think it's a suggestion
23 that really should be the first month quarterly? Which would
24 be -- and I'm open. This is just one thought was that the
25 last one was July and then October and then maybe January.
26 January would be -- or if that's too long let us know but I

1 mean I'm just putting it out there. January would be after
2 the audit, after the comments on the parent manual would be
3 in place. I also would recommend if we do January make sure
4 that there's an -- the next meeting I'm going to ask now for
5 a Spanish language interpreter to be at the meeting. Because
6 then I will make sure that I will have families here. But I
7 want to make -- because if we're going to talk about the
8 parent manual I can get it to them to look at it but I think
9 that they're going to have to need support as well.

10 MS. VANAMAN: Is it possible to do this meeting
11 either on a Monday or Friday rather than in the middle of the
12 week which makes it really hard to schedule hearings?

13 CHAIR STEEL: Suggested dates? Do we want to do
14 January? Is that --

15 MS. VANAMAN: If that's the next quarter date
16 that's when we should do it but --

17 CHAIR STEEL: So I have -- I'm at -- Monday is --
18 never the first week of January right? So the first -- the
19 next -- three next Mondays in January are the 12th, the 19th or
20 the 26th.

21 MR. LEVIN: The 19th is a holiday.

22 CHAIR STEEL: The 19th is a holiday. So could be
23 the 16th. The 12th or the 16th or the 23rd. Those are Mondays
24 and Fridays.

25 JUDGE LABA: Let me just also -- just so you know
26 kind of what the plan is for the next time we meet is that

1 our plan would be able to webcast once again and that we be
2 able to have it so there's a screen where you see Northern
3 California -- they see you and you can interact with one
4 another and we still get feedback from the public on the
5 webcast. So the plan is that we'll have one meeting instead
6 of two to make it more of an efficient system. Again there's
7 some technical issues that have to be worked out for that so
8 that's why I asked you to give me three potential dates. I'm
9 going to ask Northern California for the same.

10 CHAIR STEEL: Are we going to be able to see them?

11 JUDGE LABA: Yes. My understanding -- yeah, we'll
12 try. My understanding is there is a large television screen
13 -- correct me if I've got this completely wrong -- a large
14 television screen where you see everybody and they have the
15 same thing in their room where they see everybody and you can
16 actually talk to one another like a video conference. But
17 then it's also webcast at the same time to the public. Okay?
18 And that way you're not -- we don't have two sets of
19 recommendations. You can actually all have that
20 conversation.

21 CHAIR STEEL: And just as before some housekeeping
22 -- so we need -- and I want to say now we need an interpreter
23 of Spanish language. There may be other language but as of
24 now I know we need a Spanish language -- getting CDE here and
25 can CDE confirm a compliance person.

26 JUDGE LABA: You let them know that here.

1 CHAIR STEEL: Mr. Bilotti.

2 MS. VANAMAN: So the dates in January that if you
3 want three days would be January 12th, January 26th --

4 CHAIR STEEL: January -- yeah, so the 12th, the 26th
5 -- they're both Mondays --

6 MS. VANAMAN: Yes.

7 CHAIR STEEL: And then the 16th and 23rd would be
8 Fridays. So the preferable from what I'm hearing is the 12th
9 or the 26th?

10 CO-CHAIR READ: I think the -- I'm not quite sure
11 but I think the 20th is not available for a lot of school
12 district folks.

13 CHAIR STEEL: Okay.

14 CO-CHAIR READ: The weeks at the end of January so
15 the beginning of January would probably be better.

16 CHAIR STEEL: So the 12th or the 16th?

17 FEMALE: The 16th is a (inaudible) conference.

18 CHAIR STEEL: Okay. All right. Never mind. The
19 12th or 23rd?

20 MS. VANAMAN: And what's wrong with the 26th? We
21 have to give three.

22 CHAIR STEEL: Nothing. Okay. The 12th and the 26th.

23 MS. VANAMAN: No, no. I thought you want three
24 dates from us.

25 CHAIR STEEL: That's right. So the third date
26 would be the 23rd? That would be a Friday.

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MS. VANAMAN: So which dates are we giving?

CHAIR STEEL: The 12th, 23rd is a Friday, and the 25th
(sic).

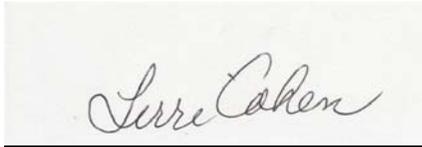
(Thereupon, the meeting
was adjourned.)

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CERTIFICATE OF TRANSCRIPT

This is to certify that I, Terri Cohen, transcribed the tape-recorded public meeting of the Special Education Advisory Committee dated October 15, 2008; that the pages numbered 1 through 196 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
November 8, 2008
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