

OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

OCTOBER 22, 2008  
9:00 A.M. - 4:00 P.M.

OAKLAND, CALIFORNIA

Official Transcriber: Terri Cohen

**COMMITTEE MEMBERS PRESENT:**

ROBERTA SAVAGE, Chairperson

SUSAN BARDET

TAMARA BROCK

CARL CORBIN

DANA JOHNSON

ELIZA MCARTHUR

KENT REZOWALLI

STEPHEN ROSENBAUM

LENORE SILVERMAN

**COMMITTEE MEMBERS ABSENT:**

NONE

**ALSO PRESENT:**

SHERIANNE LABA, Administrative Law Judge

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P R O C E E D I N G S

1  
2           **JUDGE LABA:** Good morning. My name is Sherianne  
3 Laba. I am the Presiding Administrative Law Judge for the  
4 Special Education Division for the State of California with  
5 the Office of Administrative Hearings. This is the Special  
6 Education Advisory Committee meeting -- the second of two  
7 meetings that we are holding during the month of October.  
8 The first was last week in Los Angeles and we are in Oakland  
9 today. Welcome to everybody and thank you for attending.

10                   For those of you who are here present in the  
11 building we have two handouts out in the lobby that I hope  
12 everybody has picked up. One is the Parent Manual and the  
13 other is the Agenda and the Agenda has multiple sections to  
14 it. The first is what we call our Final Agenda which is in a  
15 question answer format and attached to that is the original  
16 agenda proposed by the Advisory Committee that has a few  
17 changes that the Committee may wish to address throughout the  
18 morning.

19                   Just a couple of ground rules. We are webcasting.  
20 If you are viewing this by webcast you can access the same  
21 documents that I'm addressing -- the Parent Manual and the  
22 Agenda -- on the web page. They're on the right hand side of  
23 your screen -- your computer screen.

24                   Today one thing I would ask of everybody  
25 participating is to remember this is an Advisory Committee to

1 provide recommendations to OAH on how to improve the Special  
2 Education due process hearing and mediation process. It is  
3 not an appropriate time to talk about individual cases and  
4 remember that there are judges and other people who are  
5 viewing as well. We need to maintain the confidentiality of  
6 all the students who are involved in those cases.

7 So at this point I would like to turn the meeting  
8 over to Roberta Savage, the Chairperson for your Committee.

9 **CHAIR SAVAGE:** Good morning. Thank you for coming.  
10 My name is Roberta Savage. I'm a students attorney here in  
11 Northern California. We're going to start by going through  
12 some introductions. Once we go through the introductions  
13 I'll take over again and let everyone know how we're going to  
14 structure today. So we will start with --

15 **MR. REZOWALLI:** Kent Rezowalli.

16 **CHAIR SAVAGE:** -- Kent and Eliza come on up.

17 **MR. REZOWALLI:** Kent Rezowalli, Director of Tri-  
18 Valley SELPA.

19 **MS. BROCK:** Tammi Brock, parent.

20 **MS. MCARTHUR:** Eliza McArthur, Special Ed. attorney  
21 for school districts.

22 **MS. BARDET:** Susan Bardet. I'm an attorney for  
23 families in San Mateo.

24 **MR. CORBIN:** Carl Corbin. I'm an attorney with  
25 School and College Legal Services representing school

1 districts.

2           **MR. ROSENBAUM:** Stephen Rosenbaum, attorney for  
3 Students and Parents with Disability Rights in California.

4           **MS. MCARTHUR:** I think we did this program. Eliza  
5 McArthur, Special Ed. attorney for school districts.

6           **UNKNOWN MALE:** Speak into the microphone please.

7           **MS. MCARTHUR:** All right. For the third time,  
8 Eliza McArthur, Special Ed. attorney for school districts.

9           **CHAIR SAVAGE:** And right now we have two committee  
10 members missing. Dana Johnson who's a parent representative  
11 and Lenore Silverman who's a district attorney  
12 representative. There's been substantial traffic problems  
13 this morning here in Oakland so I assume their delays are  
14 traffic-related.

15           I want to go through the structure of this  
16 morning's meeting so that everyone has a clear idea of what  
17 we're going to be doing. Hopefully by -- it's 9:35 right  
18 now. By 9:45 our goal is to talk about the calendaring  
19 system. We intend to talk about that for no more than 30  
20 minutes. So by 10:15 we are starting with the hearing  
21 procedures. That will give us an hour and a half to go  
22 through the hearing procedures that have been listed as  
23 questions to take comments from participants. Last week in  
24 Southern California they got to E on the Agenda by lunch. So  
25 E was the first start of the afternoon. If we seem to be

1 moving faster we'll start E earlier. But the intent would be  
2 to start with E in the afternoon and move through the  
3 afternoon in a similar fashion. We'll have some time  
4 structures when we reconvene this afternoon.

5 Our lunch break today will be from 11:45 to 1:00.  
6 Those of you who know Oakland know we need that much time to  
7 take the time off.

8 We are being webcast so if you do have a comment on  
9 the particular issue please come up to the podium, state your  
10 name briefly -- you can identify your affiliation if you  
11 would like -- and then give us your comments.

12 How we intend to go through the agenda is by  
13 starting each item with public comment and then the Committee  
14 will discuss our comments as well as the public comments and  
15 our goal is to come up with whether it's one, two or seven  
16 recommendations and our Committee will vote so that we have  
17 something to hand back to OAH.

18 I think at this point Judge Laba was going to come  
19 up to identify the role of the Advisory Committee but before  
20 we get there we did have a new member arrive and as soon as  
21 she gets together we'll ask her to introduce herself.

22 **MS. JOHNSON:** Hi. My name is Dana Johnson. I am a  
23 parent from Northern California.

24 **JUDGE LABA:** We are on roles?

25 **CHAIR SAVAGE:** We are on roles, yes.

1           **JUDGE LABA:** Okay. So the role of the Advisory  
2 Committee -- and it's taken right out of our contract with  
3 the Department of Education and posted right on the front  
4 page of your Agenda there -- the role of the Advisory  
5 Committee is to provide non-binding recommendations for  
6 improving the mediation and due process hearing system for  
7 the State of California. So what we're hoping that you can  
8 provide for us is ongoing recommendations to improve that  
9 system and we will take all those recommendations back and  
10 consider those from both of the committees.

11           **CHAIR SAVAGE:** The other issues that need to be  
12 addressed in this short time frame are more just focused on  
13 the Committee discussion. Down in Southern California last  
14 week they talked about tabling these two issues: one being  
15 'Is there any structural changes we would want to make to the  
16 Committee?' and how to ensure continuity of the Committee  
17 knowing that our terms are one year unless we re-apply and  
18 get picked to come back on. Since this is kind of our first  
19 official meeting -- formal meeting -- I am comfortable with  
20 waiting until January when we reconvene unless members of the  
21 Committee think we have enough information now to start  
22 talking about it.

23           So I'm hearing everyone nodding their head yes that  
24 we'll wait until January and in January as I understand from  
25 Judge Laba these -- there will be one meeting in January. It

1 will be webcast. Both the Northern California and Southern  
2 California Committee will be meeting at the same time and  
3 will be able to discuss the issues primarily that come out of  
4 here including OAH's response and then other issues that  
5 arise.

6 So as luck would have it we're five minutes early  
7 which is good. What we would like to start talking about  
8 first is the calendaring system and I think Judge Laba is  
9 going to start a discussion on the procedure that is  
10 currently in place that has been in place since roughly July  
11 of 2008.

12 **JUDGE LABA:** Okay. So in July -- well, back in  
13 April of last year based upon complaints and recommendations  
14 from the public we re-evaluated the calendaring system that  
15 we had.

16 Prior to July we calendared cases for five hearing  
17 days and gave everyone a pre-hearing conference and a  
18 mediation date in the initial scheduling order. So based  
19 upon comments we discussed both in April and in July of the  
20 Advisory meetings and the feeling from the public was that  
21 there was no need to schedule the five days because most  
22 people don't use all those days the first time around. And  
23 so what we did is we set up a system where there's one  
24 hearing day calendared and one mediation day calendared  
25 initially.

1           And then we also -- the recommendation was to make  
2 requesting continuances a little bit easier to create some  
3 forms that could be used in order to help the parties request  
4 continuance by meeting and conferring ahead of time. So we  
5 in July went to setting one hearing date and one mediation  
6 date in the initial scheduling order. We don't set a pre-  
7 hearing conference date right up front because most people  
8 are requesting a continuance and setting that date through  
9 that process. We also distributed and we do distribute with  
10 every scheduling order a Request to Continue form for either  
11 the mediation or the hearing and so I know that there have  
12 been some questions about the forms and things like that.

13           The one goal of OAH is to make sure that we are  
14 providing due process in a timely, efficient manner. The law  
15 says we are required to hold a hearing and issue a decision  
16 within 45 days. And for parent-filed cases that's really 75  
17 days because of the resolution period. So our goal is to  
18 meet that 45 days as often as possible but we recognize that  
19 the parties have lots of circumstances upon which there's a  
20 need to continue that and the law does allow parties to agree  
21 to extend those timelines. It also allows for good cause  
22 extension of those timelines.

23           One of the things that we are required to do when  
24 we set these cases is we do have to give you a hearing date  
25 because that is how we track the cases. It is also how the

1 Federal government tracks whether or not we are meeting those  
2 timelines by carrying those dates through. So we do do that  
3 based upon the information that OSEP has given us on how to  
4 make sure that these cases are moving through the process.  
5 So it's very important that OAH have that ability.

6 The other thing that we have tried to eliminate  
7 from the process are what are called trial setting  
8 conferences. And that comes right down to a resource issue  
9 as well as an increase in litigation cost for the parties.  
10 Having a trial setting conference requires that I have a  
11 judge available to hold those trial setting conferences and  
12 also means that the attorneys have to be available to  
13 participate in that conference. So through the changes in  
14 July we have tried to minimize the number of trial setting  
15 conferences and use those only for exceptional circumstances  
16 and really get the parties to talk to one another and come up  
17 with agreeable dates.

18 So as far as OAH what we're looking to do in the  
19 calendaring system is to ensure that the hearings are held  
20 and completed in a timely manner, that we don't have things  
21 that go on for a really long time unless there's a real  
22 reason for that, that we can use our resources to the fullest  
23 extent possible. As you know the State of California is in a  
24 very serious financial crunch and that affects our office.  
25 And so we'd like to use our resources as much as possible and

1 we would like to be able to accommodate the requests of the  
2 parties in order to hold hearings at times that are  
3 convenient to them. So in discussing this I would ask that  
4 you just consider the -- the needs of OAH as well as far as  
5 time, resources and our goal to really be able to address  
6 these hearings in a timely, efficient manner.

7 **CHAIR SAVAGE:** Thank you.

8 **JUDGE LABA:** Any questions for me about the  
9 calendars? Okay.

10 **MS. BROCK:** What happens when you get a substantial  
11 amount of cases all at the same week or time that you have to  
12 schedule?

13 **JUDGE LABA:** They are all scheduled based upon --  
14 we have like a set time frame so, for instance -- and I'm  
15 just going to throw out numbers. I'm not -- they're not  
16 accurate numbers. Let's say you file a case and then on  
17 January 1<sup>st</sup> -- your mediation will be set for like February  
18 15<sup>th</sup>. It will be set -- we'll wait the 30 days and then 15  
19 days for your mediation. It will all get set within the time  
20 -- the same time frame. We have the resources available in  
21 order to cover whatever influx of cases that we have. We can  
22 move to -- we have contract judges available to help with the  
23 process. We can use our full time judges as well. And in  
24 the reality of it is even if we get 100 cases on one day, a  
25 substantial portion of those -- and because over 95 per cent

1 of our cases settle without a hearing -- and that's been  
2 consistent in Special Education for 15 plus years -- we know  
3 that a percentage of those cases are going to go away. We  
4 have never had a situation where we -- absent a judge  
5 becoming ill -- I think we had a judge that was caught in the  
6 San Diego firestorms last year and had to be evacuated -- so  
7 absent really extenuating circumstances we have never had a  
8 hearing that couldn't go forward because we didn't have  
9 somebody to send. Okay?

10 **MS. BROCK:** Okay, thank you.

11 **MS. BARDET:** Yes, I had a question about how OSEP  
12 tracks compliance. Have you received written instructions on  
13 how to track the cases in case management because I'm really  
14 wondering if somehow TSC's could be used to track the  
15 progress of a case rather than actual hearing dates.

16 **JUDGE LABA:** Okay. That's a good point. And let  
17 me -- thank you for bringing that because there's one other  
18 part of this that I didn't -- I forgot to mention -- is the  
19 idea of setting a mediation followed -- and just setting a  
20 mediation and nothing afterwards -- that concept also doesn't  
21 work for our office because -- I just want to address this  
22 one point and then I'll answer your question. It doesn't  
23 work because mediation is voluntary. You could cancel the  
24 mediation. All of a sudden your case falls off into never-  
25 never land because there's no date to pop up on somebody's

1 calendar.

2 **MS. BARDET:** Right. I should clarify my question  
3 then. After the initial hearing date --

4 **JUDGE LABA:** Sure.

5 **MS. BARDET:** I'm talking about once you have an  
6 initial hearing date -- a one day hearing date -- is there a  
7 way for OSEP to track the progress of the case after that  
8 because it would be by mutual agreement.

9 **JUDGE LABA:** And my point is separate and apart  
10 from what you're asking --

11 **MS. BARDET:** Yes.

12 **JUDGE LABA:** -- I just wanted to make sure -- you  
13 triggered that in my head to mention that -- that mediation  
14 alone is not a date that we consider a firm date because it  
15 is something that anybody can cancel at any time so you  
16 always have to have either a trial setting conference, a pre-  
17 hearing conference with a hearing date or something following  
18 after that. We will always require that because otherwise  
19 your case will fall through the cracks and be -- we won't  
20 know to follow up on it because it's not popping up on  
21 somebody's calendar.

22 I'm going to look to my friends at CDE who are here  
23 today. Summer of 2006 OSEP was here doing a very brief  
24 review of the program. Am I correct on my date?

25 **MR. BILOTTI:** It was October.

1           **JUDGE LABA:** Okay. October of 2006 a very brief  
2 review of the program. Our involvement -- again OSEP  
3 monitors CDE and part of that is our dispute resolution  
4 program. Part of that was they asked us a lot of questions  
5 about our calendaring system. They made some indications  
6 that there were some difficulties with the way we calculate  
7 decision due dates but I do not know of any written  
8 recommendations that we have received.

9           **MR. BILOTTI:** We have not received any.

10           **JUDGE LABA:** So Jim Bilotti from CDE is confirming  
11 what I understood is that while they made some comments  
12 and -- about the fact that the process that we're using is --  
13 maybe needs to be corrected we haven't received any guidance  
14 from them on how to do that.

15           Now I can tell you that we go to these national  
16 conferences and we -- Massachusetts? Okay. I always do  
17 that. I get Maryland and Massachusetts mixed up.  
18 Massachusetts recently went through a rather extensive audit  
19 and got some very specific recommendations on how to calendar  
20 cases and how to calculate due dates and what they actually  
21 do is if you -- I'm going to look at my friend Ann over here  
22 -- Ann McMurray who's a presiding judge in Van Nuys because I  
23 always -- I misquote this regularly. What Massachusetts does  
24 is that they -- once you request a continuance, you get a  
25 continuance to a date certain and your decision is

1 automatically due 20 days after the end of the hearing.

2 **MS. MCMURRAY:** (Inaudible)

3 **JUDGE LABA:** Okay. Okay. That's right. They  
4 have -- it was the other state that did -- so what  
5 Massachusetts did that OSEP said was fine is they have a  
6 status conference. They don't set a hearing date to start  
7 with. I can verify that. I'll verify that with them.

8 But just like you're suggesting, Susan, is they have  
9 a status conference which is a telephone conference which I'm  
10 concerned about resources and many of you have raised the  
11 cost of increasing the cost of litigation by having to attend  
12 a status conference. But much like Superior Court's do, they  
13 have a status conference where they set the hearing dates and  
14 the status conference is held right after the resolution  
15 session - like day 20. Like right after the expiration of  
16 what could be a resolution agreement and then they find out  
17 whether that was successful and they set hearing dates and  
18 then they know right away when the decision is due. So it's  
19 much more of a formalized system like you would get in a  
20 Superior Court.

21 Did that answer your question?

22 **MS. BARDET:** Yes, thank you.

23 **JUDGE LABA:** Okay. So I think that it's a  
24 possibility. I would have to investigate a little bit more.

25 **CHAIR SAVAGE:** One of the things that I would like

1 to put down on our list as possible recommendations on the  
2 calendaring for the Committee is to one, get access to the  
3 Massachusetts calendaring system so we can actually see what  
4 that calendaring system looks like -- make that available to  
5 the public. And then at the moment in time OSEP gets some  
6 recommendations back to us, have it available.

7 **JUDGE LABA:** And I wouldn't -- it's been two years  
8 so I don't know if we can get anything from OSEP. So --  
9 Eliza had a question.

10 **MS. MCARTHUR:** Do you wish to finish?

11 **JUDGE LABA:** Is it for me?

12 **MS. MCARTHUR:** Yes, it's for you.

13 **JUDGE LABA:** Go ahead. No, I'm done.

14 **MS. MCARTHUR:** I'm wondering whether the experience  
15 of other people here is similar to what mine has been which  
16 is that when a case is continued or needs to be continued  
17 because the mediation is being continued or the mediation  
18 needs to be continued past the original hearing dates the  
19 amount of time that is spent on trying to figure out dates  
20 for a new hearing in cases of which 95 per cent actually  
21 settle and do not require that hearing, is a terrible waste  
22 of time and, in fact, is very, very consuming of attorney and  
23 client time. As opposed to a TSC following mediation where  
24 everybody is already there and it takes literally another 15  
25 minutes. And I wonder whether you could respond to whether

1 anybody else has similar experience. I do want to mention  
2 that Kathryn Dobel and I both have had this experience in  
3 cases together and cases that are with other people and --

4 **JUDGE LABA:** I don't know what question I could  
5 respond to. I think it's a discussion that --

6 **CHAIR SAVAGE:** I think I'll take over, Eliza.

7 **MS. MCARTHUR:** Actually, you know what? Yes. Do  
8 take over in a moment. I think the only thing I wanted to  
9 ask you is whether there is anything -- any direction from  
10 OSEP that would prevent our going back to the system we had  
11 for some period where the TSC followed the mediation  
12 immediately and we didn't worry about scheduling dates that  
13 are, for the most part, in many, many cases phantom dates.

14 **CHAIR SAVAGE:** I think what we -- I think what I  
15 want to do with that, Eliza, is put that on our list of  
16 possible recommendations from the Committee and have some  
17 discussion about it because I think you're not alone in your  
18 concern. So before the Committee starts talking about the  
19 issue of calendaring, is there anyone in the audience or is  
20 there any webcast comment about the calendaring system  
21 specifically? Is it working for people? Is it not working  
22 for people? Do people have suggestions about the current  
23 system and how its -- how effective or ineffective it is?  
24 And I don't see any comments from the public so -- and  
25 there's no webcast so let's have the Committee discuss the

1 issues.

2 I personally agree with Eliza. I think the current  
3 system is a difficult system to manage. I think it takes a  
4 lot of time on calendaring hearing dates that I'm not going  
5 to be attending. Solely to get a mediation date where a case  
6 may -- that has a great likelihood of success of settling.  
7 And I think that's -- whether me sitting on the phone for  
8 five minutes or me spending two or three hours trying to  
9 calendar and coordinate with my clients, I think the five  
10 minutes is better spent. Okay. Great.

11 Anybody else have feedback on the system?

12 **MR. CORBIN:** Yeah, I would agree with that also,  
13 that it does make sense the way we'd be doing this is to have  
14 the mediation if it gets resolved and then following the  
15 mediation right there with the mediator to then put on a hat  
16 to be able to then go and schedule the trial setting  
17 conference to go and arrange the dates. Everybody's there.  
18 Everybody's calendar is available. It just seems like the  
19 most efficient way, frankly.

20 **JUDGE LABA:** The issue I have with that --

21 **MR. ROSENBAUM:** Do you want us to announce  
22 ourselves or is it -- we don't need to or there's no audio  
23 cast?

24 **MR. CORBIN:** You've got a name tag.

25 **CHAIR SAVAGE:** Yeah, the name tag. You have a

1 little sign.

2           **MR. ROSENBAUM:** Okay. I actually was just at a  
3 mediation yesterday which was going to continue but we went  
4 ahead and set some new dates as well so it wasn't formally  
5 speaking a trial setting conference but the mediator was  
6 there, was able to set new dates. The parties were there.  
7 The counsel were there. And that worked just fine, whether  
8 it was TSC or not, that made sense to do it right then and  
9 there.

10           **CHAIR SAVAGE:** The only -- the issue that I've seen  
11 come up with scheduling at the mediation is not necessarily  
12 for represented parents. And so maybe this is something that  
13 Tamara and Dana can talk to -- is for the parents who are  
14 working either on their own at the time of the mediation or  
15 working with an advocate who specifically does not take cases  
16 to hearing. If they have a failed mediation I think parents  
17 are at a substantial disadvantage to have to schedule on that  
18 day a hearing date if they're seeking -- going to seek  
19 counsel -- I think they need to be given some time and then a  
20 TSC held. So I don't know if parents have any -- parents on  
21 our Committee or anyone who has comment on that.

22           **MS. JOHNSON:** I agree. It's important to offer  
23 time for parents that are in a situation, you know, just as  
24 you describe. But at the same time, myself I was just  
25 prepared. I knew that I had my calendar with me and was

1 ready to just make those dates available because I wanted  
2 also to not waste any further time. I was trying to get my  
3 daughter back into her education system. So for myself  
4 personally, I was just prepared what I was willing to alter  
5 and change my schedule to do whatever it was going to take to  
6 get my daughter's program back to what it should.

7 **CHAIR SAVAGE:** Okay.

8 **MS. BARDET:** And I would agree with Eliza and  
9 Roberta that the current system is very burdensome and very  
10 costly. And my calendar is filled with hearing dates that  
11 I'm hoping aren't -- won't see me in hearing for those cases  
12 but what's happening is I can't get hearing dates scheduled  
13 for cases that I think need to go to hearing. So it's really  
14 working at cross purposes. I would prefer to see a trial  
15 setting conference scheduled a few days after mediation, only  
16 because I think it does interrupt the flow of mediation and  
17 puts people in a different frame of mind. Rather than  
18 settling it sort of puts people in the mind of going forward.  
19 But I would rather see a TSC during mediation than have the  
20 current system. So I want to make that clear.

21 **CHAIR SAVAGE:** Okay.

22 **MR. REZOWALLI:** So can I ask are you suggesting  
23 that at a mediation even though you're going to do something  
24 and maybe meet again that you set dates for the hearing at  
25 that point? Even though you know you're probably going to

1 meet again in that schedule? I'm just asking Eliza.

2 **CHAIR SAVAGE:** No, that's not what I would be  
3 suggesting. I would be suggesting if your mediation  
4 failed --

5 **MR. REZOWALLI:** Okay.

6 **CHAIR SAVAGE:** -- at that mediation you would set  
7 hearing dates. I think we still need the flexibility because  
8 of the type of work this is that if we have a mediation that  
9 says we're going to meet again in four weeks, that we still  
10 don't -- if the parties are working together we should be  
11 able to meet again in four weeks without a hearing date in  
12 six weeks.

13 **MR. REZOWALLI:** And I think that some time --

14 **CHAIR SAVAGE:** That's my --

15 **MR. REZOWALLI:** Sometimes when that happens, okay,  
16 you have a mediation. You agree to meet. I'm just making  
17 this up. You agree to meet at IEP in a week. You go to IEP  
18 meeting and it works out. So you don't necessarily settle in  
19 mediation because you're settling it down the road.

20 **MS. MCARTHUR:** But can I add -- Kent?

21 **MR. REZOWALLI:** Yes.

22 **MS. MCARTHUR:** It doesn't prevent one from setting  
23 a TSC post the IEP date, number one. And number two, I could  
24 envision some situations where a judge who puts on this  
25 procedural hat, if you will, to set the TSC has already been

1 with these parties in five mediations and, you know, needs to  
2 get the case moving and will insist on setting dates, bearing  
3 in mind that another mediation or an IEP or informal talks  
4 might be taking place prior to that -- to those set hearing  
5 dates. So I think our program -- our approach does not  
6 prevent continued -- nor does it discourage continued  
7 negotiations if you will.

8 **MR. REZOWALLI:** Given that scenario, when would you  
9 set the hearing dates?

10 **MS. MCARTHUR:** Pardon me?

11 **MR. REZOWALLI:** Given that scenario of having  
12 something that will occur in a week or two that might settle  
13 it outside of mediation --

14 **MS. MCARTHUR:** There might be another TS -- there  
15 might be a TSC set post the IEP date, for instance.

16 **CHAIR SAVAGE:** Well, and I think even in the  
17 current system if you're at a mediation -- I had one recently  
18 where we were mediating in May and we agreed and the judge  
19 agreed in that mediation that we would have hearing dates in  
20 January for that reason. We had an IEP, we had another  
21 mediation but it was very structured and I -- it was very  
22 systematic. And I've only seen that in a very limited case.  
23 Because normally it's kind of a rush to get hearing dates it  
24 seems -- or get something on the calendar.

25 **MR. REZOWALLI:** So that scenario wasn't a failed

1 mediation.

2 **CHAIR SAVAGE:** It was -- no, it was not a failed  
3 mediation.

4 **MR. REZOWALLI:** Okay. Because I had heard that  
5 term 'failed mediation.' That's what I was responding to.

6 **CHAIR SAVAGE:** Sure.

7 So does the Committee -- do people on the Committee  
8 want to identify a couple of recommendations or based on what  
9 we've been talking about are there any further comments on --  
10 from the public, from the web? Because otherwise we're going  
11 to just start talking about 'What is it we think OAH should  
12 do?' and decide how many people, you know, think one system  
13 should be put in place versus another.

14 **MR. ROSENBAUM:** Roberta, I just noticed Judge Laba  
15 gave us the minutes from the Southern California meeting and  
16 on Page 5 there are comments there on calendaring that I  
17 don't know if we want to --

18 **CHAIR SAVAGE:** Right.

19 **MR. ROSENBAUM:** -- consider any of those.

20 **CHAIR SAVAGE:** Well, and I -- thanks for pointing  
21 that out because I think what I would like to do is get to  
22 the second issue that seemed to come up at the Southern  
23 California meeting which is the issue of good cause. So you  
24 have a mediation and you set hearing dates or at any point in  
25 time, what constitutes good cause for a continuance by either

1 party. I want to say one of the issues from Southern  
2 California has been parties have reached agreement on a  
3 continuance. It may be -- I think it's more common in the  
4 second continuance and yet there's -- they're getting their  
5 continuances denied.

6 So let's start with just the calendaring system and  
7 then we will have the next 15 minutes to talk about what good  
8 cause is and what we think should happen.

9 So does anyone have a recommendation that we want  
10 to discuss? A specific recommendation on the calendaring.

11 **MR. CORBIN:** Yes, I would like to see at the  
12 mediation that we have -- at the end of the mediation we have  
13 a trial. We have the option for a trial setting conference.  
14 And if it looks like we're going to have mediation to be  
15 continued -- it's not a failed mediation, we just may need to  
16 meet again then that's some information that can be shared  
17 with the mediator that could be conveyed to OAH so it doesn't  
18 get lost off the calendar and they have a new mediation date  
19 rather than schedule a trial setting conference after the  
20 mediation. Again that involves scheduling, calendaring --  
21 let's just get it done right there at the mediation.

22 **CHAIR SAVAGE:** And I know that, Susan, you had  
23 talked about scheduling a TSC after.

24 **MS. BARDET:** Yes, but I wanted to clarify because  
25 I'm taking the minutes here.

1           **CHAIR SAVAGE:** Okay.

2           **MS. BARDET:** So you're recommending that if the  
3 mediation is continued to a second mediation date then we  
4 just schedule another mediation date without scheduling a TSC  
5 or hearing date?

6           **MR. CORBIN:** Yes, without doing hearing dates  
7 because again if --

8           **MS. BARDET:** Yeah.

9           **MR. CORBIN:** The goal is if we can be successful at  
10 mediation it doesn't make sense to have phantom hearing dates  
11 and then for the purposes of OAH they will have a mediation  
12 date on their calendar --

13          **MS. BARDET:** Okay.

14          **MR. CORBIN:** -- so if that mediation date does not  
15 occur OAH would be able to follow up with that issue.

16          **MS. BARDET:** Thank you. Okay.

17          **CHAIR SAVAGE:** Now Eliza, you brought up the issue  
18 of you're in your fifth mediation and the parties continue --

19          **MS. MCARTHUR:** Yeah.

20          **CHAIR SAVAGE:** -- continue to delay.

21          **MS. MCARTHUR:** I mean I think we --

22          **CHAIR SAVAGE:** You have -- do you want to maybe --

23          **MS. MCARTHUR:** Yes, I'd like to comment --

24          **CHAIR SAVAGE:** -- as a way of adding to the  
25 recommendations?

1           **MS. MCARTHUR:** Yeah, I -- well, you know, I think  
2 that -- I will say some -- I think there has to be some  
3 discretion given to the judge in that for the purpose of our  
4 paying some attention to what the Feds have been saying.  
5 Okay?

6           Toward that end, if we have a continued mediation  
7 we could have I suppose a continued TSC to take place after  
8 the next mediation. So there's some date certain. I think  
9 it would be in the judge's discretion to deal with that group  
10 of folks who haven't been able to put it together for five  
11 mediations straight. As it would be in the judge's  
12 discretion to deal appropriately with that parent who may be  
13 as prepared as Dana in terms of her or his calendar but not  
14 knowing whether her advocate who may not be present in the  
15 mediation or an attorney she has to procure because her  
16 advocate doesn't take the case to hearing -- whether that  
17 person will be available. I mean those are things that I  
18 think can properly be dealt with by the judge when the judge  
19 puts on that other hat.

20           **MS. BARDET:** But I had a question about that. But  
21 since mediation is voluntary, if say the school district  
22 doesn't want to just have endless mediations wouldn't that  
23 solve itself?

24           **MS. MCARTHUR:** Sure. Sure.

25           **CHAIR SAVAGE:** So let's see if I can kind of come

1 up with a recommendation or a couple. So I think the one --  
2 there's one recommendation that at the end of a mediation  
3 that we set hearing dates. We either set a future mediation  
4 date or we set hearing dates. Is that -- I think that's one  
5 possibility.

6 I think the other possibility is we have a  
7 mediation and within -- I'm going to throw three business  
8 days -- we have a TSC. We can -- I mean, that was just kind  
9 of a number I pulled. It could be five, it could be seven,  
10 but a set time when a TSC is held to set hearing dates.

11 The other issue I heard raised, which I think Eliza  
12 put nicely, is there needs to be some type of flexibility  
13 built in for that judge in a unique situation. In the not  
14 common situation -- a parent who's unrepresented and is going  
15 to now seek an attorney. Should they be given more than five  
16 days to find an attorney and participate in a TSC?

17 The other option is the parties who filed in  
18 January of 2007 and this is their seventh mediation. Can  
19 they continue to have another mediation and delay this  
20 because we do have the 45-day which has been completely  
21 killed. So I think those are the possibilities.

22 **MS. BARDET:** And I would like to just expound a  
23 little bit on, Roberta, the one you suggested is coming from  
24 me, which is I have never found that having a TSC after  
25 mediation adds to my cost. In fact I think it decreased cost

1 because I'm not trying to contact all of my witnesses and  
2 finding out their schedules and dealing with all of that  
3 which that is a very time consuming burden, I think, for all  
4 parties. So I think it would actually be -- other than the  
5 resources at OAH for having a judge available -- I do think  
6 that it actually lessens cost to parties.

7 **CHAIR SAVAGE:** Okay, so let's look at our three  
8 recommendations and see how the Committee feels about it.  
9 Steve, do you have another comment?

10 **MR. ROSENBAUM:** Yes, Susan, so are you saying that  
11 reason for the additional time is to be able to contact  
12 witnesses --

13 **CHAIR SAVAGE:** Yes.

14 **MR. ROSENBAUM:** -- on availability? Okay.

15 **MS. BARDET:** And it would also -- and also not to  
16 disrupt the flow of mediation. Because I do find it changes.  
17 Maybe I'm alone in that but I do find it changes the tenor a  
18 little bit.

19 **MR. CORBIN:** Just to comment on that I think that  
20 that adds a little -- frankly, from the district's  
21 perspective it adds a little more seriousness to the  
22 mediation that we don't have five and six mediations -- that  
23 if we don't get this resolved we're going to be going to  
24 hearing and the parties need to appreciate that. So I kind  
25 of like having that incentive if you will. Because that's

1 real. Again, if we don't resolve this in mediation we're  
2 going to hearing. And I think the parties need to appreciate  
3 that.

4 **MS. BROCK:** I just have a comment because you're  
5 talking about you have a mediation and then you're changing  
6 the date that OAH sets up. Why aren't parties filing for  
7 mediation only to start off with -- see where they're going  
8 instead of wasting OAH's resources having these fake  
9 calendars?

10 **CHAIR SAVAGE:** I think the short answer -- and  
11 other people can comment -- is one, no attorneys can  
12 participate in the mediation-only. So if an attorney is  
13 filing I can't -- I'm not even sure I can file.

14 **MS. BROCK:** Are you sure? Because --

15 **CHAIR SAVAGE:** Yeah, if the mediation-only system  
16 is a system only for unrepresented parties. So districts  
17 can't have attorneys involved and neither can students. I  
18 think the other issue is what Carl's brought up -- is the  
19 impending doom of a hearing sometimes gets parties to move  
20 and talk in a manner that they wouldn't otherwise talk.

21 **MS. BROCK:** Who sets the rule that attorneys can't  
22 be at mediation only?

23 **MS. MCARTHUR:** The Ed. Code.

24 **MS. BROCK:** The Ed. Code?

25 **MS. MCARTHUR:** And it also excludes advocates

1 involved in legal advocacy. Excludes. Did I say includes?

2 **MR. CORBIN:** Independent legal contractors.

3 **MS. MCARTHUR:** Right.

4 **CHAIR SAVAGE:** All right. So I want to move us  
5 along so we can talk about the good cause for a continuance.  
6 So right now what we have on the table is we have a TSC at  
7 the end of the mediation. So basically the judge turns  
8 around --

9 Good morning.

10 So that's one. Two is we would have -- we would  
11 recommend that after a mediation there is a TSC held within a  
12 particular number of business days, be it three or five. And  
13 then the third recommendation is what Eliza talked about is  
14 bringing in some flexibility so that in an unusual  
15 circumstance the judge in that mediation can take control and  
16 say we're not having a TSC because this parent is going to go  
17 seek -- look for an attorney so we will be setting one in  
18 three weeks out or you parties have been here for seven times  
19 -- we're not letting you just drag on.

20 So starting with number one being a TSC is held as  
21 part of the mediation -- let's see a show of hands from the  
22 Committee who thinks that is a good recommendation.

23 **MR. ROSENBAUM:** Roberta, could I suggest a hybrid  
24 of all --

25 **CHAIR SAVAGE:** Sure.

1           **MR. ROSENBAUM:** The default of the norm would be  
2 that you set it at the end of a so-called failed mediation --  
3 end of the mediation. It is set. However if any party says  
4 I need more time to find witnesses or whatever, I'll set it  
5 three days later or if the judge determines in a case of pro  
6 per, we need more time -- whatever. There's always that  
7 discretion or there've been too many mediations but otherwise  
8 it should just get set at that time. And there's always good  
9 cause.

10           **CHAIR SAVAGE:** Who votes for Steve?

11           Okay, Lenore, we're not asking you to vote yet.  
12 But when you have a minute if you can just send me a note so  
13 you can introduce yourself unless you want to do it now.

14           **MS. SILVERMAN:** Sure. My name is Lenore Silverman.  
15 I'm a partner with Fagen Friedman & Fulfrost. I represent  
16 school districts.

17           **CHAIR SAVAGE:** And all we've gotten through if you  
18 look at the agenda is we're on the issue of calendaring and  
19 we have about seven minutes left on it.

20           **MS. SILVERMAN:** Perfect.

21           **CHAIR SAVAGE:** And we're going to be talking about  
22 good cause for a continuance.

23           **MS. SILVERMAN:** Great. Thanks.

24           **MR. ROSENBAUM:** And, Lenore, you have to vote for  
25 my motion.

1           **CHAIR SAVAGE:** And vote for Steve's motion. So we  
2 have a unanimous vote.

3           The second issue on the calendaring system is good  
4 cause for a continuance. It's -- in the former system -- I'm  
5 not trying to put SEHO against OAH. In the former system  
6 orders were online and we could search an order to find out  
7 what good cause is -- I think people like myself and maybe  
8 I'm alone in this -- were having a more difficult time  
9 understanding what is good cause for a continuance under the  
10 current standards. So I'd like to take comment from the  
11 audience first if they have any questions or comments on the  
12 issue of good cause for a continuance. What they think it  
13 might be. Do they know the standard that's being applied?  
14 If we have any webcast comment? Otherwise I'm going to open  
15 it up to the Committee to talk about the issue.

16           Dana?

17           **MS. JOHNSON:** Well, the problem I had with showing  
18 good cause when I asked for a continuance had to do with a  
19 California Department of Ed. So I'm not sure if we're  
20 tabling that or we can address it now.

21           **CHAIR SAVAGE:** We're going to talk about good cause  
22 but if there's an issue with CDE we'll be sure to bring it up  
23 at that point.

24           **MS. JOHNSON:** Sure. And to me that was my good  
25 cause -- that the CDE was holding up my case to -- I needed

1 the continuance until they completed their out of compliance  
2 complaint.

3 **CHAIR SAVAGE:** So your question is would good cause  
4 for a continuance be the completion of a compliance complaint  
5 that directly affects what you can do at hearing?

6 **MS. JOHNSON:** You are reading my mind. Yes.

7 **CHAIR SAVAGE:** Okay. What we'll do -- I mean I  
8 think that's a good question. It is -- does -- as part of a  
9 recommendation does the Committee think that if a party has  
10 filed a compliance complaint that may directly affect the  
11 hearing -- for example, getting records -- would that  
12 constitute good cause? We don't have to -- we can talk about  
13 it now but we're not going to vote until a couple minutes.

14 Carl, you're shaking your head.

15 **MR. CORBIN:** Yeah. I guess, again, if the due  
16 process complaint has been filed that supersedes and CDE is  
17 required to set aside the compliance complaint. In addition  
18 if a compliance complaint has some sort of findings, OAH  
19 through a hearing can overrule that essentially. So I'm not  
20 sure of the benefit of waiting for a compliance complaint to  
21 be finished prior to moving straight to due process hearing.

22 **MS. MCARTHUR:** I think however --

23 **CHAIR SAVAGE:** Eliza and then Susan.

24 **MS. MCARTHUR:** There is certainly in terms of the  
25 specific example you mentioned, a very important connection

1 between the CDE and the hearing. And that is, of course, the  
2 request for records. Parent who is without records cannot  
3 properly prepare for the hearing or properly establish her  
4 position and so on. Nonetheless, it seems to me that the  
5 issue here is not whether waiting for CDE should be good  
6 cause or whether we should be waiting for CDE. The question  
7 is whether the district's failure to forward the records,  
8 assuming we have a proper declaration supporting the motions  
9 that are being filed, is good cause for OAH to allow the  
10 parent more time to --

11 **CHAIR SAVAGE:** -- prepare for a hearing.

12 **MS. MCARTHUR:** -- so on and so forth. Yeah.

13 **CHAIR SAVAGE:** Right. I think that's -- I think it  
14 -- if I understand you correctly it's not rushing CDE, it's  
15 having OAH delay.

16 **MS. JOHNSON:** Right.

17 **MS. MCARTHUR:** Plus CDE may be taking on numerous  
18 issues that will have -- that in fact should be stayed  
19 pending the due process. So it seems to me that it just  
20 needs to be dealt with as a substantive issue. Does it  
21 supply the good cause?

22 **CHAIR SAVAGE:** Right. I think -- before I get  
23 there -- I know Susan --

24 **MS. BARDET:** No. I was going to say what Eliza  
25 said.

1           **CHAIR SAVAGE:** Okay.

2           **MS. JOHNSON:** In my specific situation what I found  
3 that happened was the -- one of the judges on a motion had  
4 stated that there is, you know, that there is no longer NOI  
5 and that I could proceed and go forth and in there, there was  
6 a section called 1415 and it had some letters after it -- but  
7 anyway I was waiting for then a response from the District  
8 and the SELPA program and it was a response that I had never  
9 received. So for to be able to prepare for my daughter's  
10 case -- her being unrepresented and doing this on my own, I  
11 was waiting for this to happen. So then when I applied for  
12 to the CDE to do this -- because I had actually contacted  
13 Judge Laba and you said it was out of compliance complaint.  
14 So when I contacted the CDE they said they can't have an out  
15 of compliance complaint run concurrently when you have an  
16 open OAH case. So they denied it and they sent me a bunch of  
17 codes from the CDE stating why that, you know, out of  
18 compliance opening the case was denied. And then after  
19 further investigation the codes were actually fraudulent.

20           **CHAIR SAVAGE:** Okay. So I think what you're --

21           **MS. JOHNSON:** And so anyway I didn't get to --

22           **CHAIR SAVAGE:** I think what your issue is, which is  
23 something that does need to be addressed and can be addressed  
24 by OAH, is if a party requests a continuance based on a  
25 CDE -- the filing of a CDE compliance complaint that would

1 directly affect the hearing -- so getting an answer so the  
2 parties know. Getting records so the parties can prepare.  
3 Would that constitute good cause?

4 Okay. So that's one. I think the other question  
5 is what -- I think the issue from Southern California and we  
6 can decide if we agree that this is an issue -- is what does  
7 constitute good cause? Because as I understand it there have  
8 been parties who jointly agree to continue hearing dates and  
9 they get that denied. And so what -- would that constitute  
10 good cause to continue a hearing? And if so, do we want to  
11 recommend that additionally I think the question is more of a  
12 general question. What is the standard and can we get OAH to  
13 identify and articulate the standard for good cause?

14 **MR. REZOWALLI:** A question. Why would -- if both  
15 sides stipulate -- it not be continued?

16 **CHAIR SAVAGE:** I don't know.

17 **MS. SILVERMAN:** Well, I know from my experience if  
18 both sides stipulate and provide OAH with hearing dates my  
19 recollection is that they've been granted most of the time.  
20 I do note that there's a line that I've been seeing in the  
21 orders that come down and say this is your last continuance,  
22 you won't be able to continue it any time after this even if  
23 we mutually agree to dates. And yet when we've had good  
24 cause for asking for another continuance that also has been  
25 granted. I think that we just have to be very clear about

1 what the intentions -- I mean, of the parties are with  
2 respect to moving it forward.

3 **CHAIR SAVAGE:** Was that on your first or second  
4 request because as I had understood it, a lot of times  
5 parties get their first request. I just haven't been in the  
6 position to be making -- you've made a first request. You've  
7 set those hearing dates and then as you're trying to move  
8 your second dates and the parties agree we're going to move  
9 our second dates, make a motion for a continuance -- it's  
10 been denied. Eliza?

11 **MS. MCARTHUR:** Do you know under -- do we have  
12 information -- I have never had a continuance denied as far  
13 as I can recall.

14 **MS. SILVERMAN:** When it's been jointly agreed upon.

15 **MS. MCARTHUR:** Yes.

16 **MS. SILVERMAN:** Never. Okay.

17 **MS. MCARTHUR:** And in addition to joint agreement  
18 we always provide what I've believed all along to be good  
19 cause which generally, to the best of my memory, is we're  
20 continuing in mediation.

21 **CHAIR SAVAGE:** Right.

22 **MS. MCARTHUR:** And that has never been denied and I  
23 don't recall any other denial on a joint stip.

24 So I guess the question that I have and maybe it's  
25 somewhere in this Southern California -- you know, objections

1 and troubles with OAH -- under what circumstances are these  
2 continuances that are stip'd to being denied?

3 **MS. SILVERMAN:** Well, we've been getting denials  
4 when the parties have not specified hearing dates.

5 **MS. MCARTHUR:** But I think that's a different case.

6 **CHAIR SAVAGE:** I think so, too.

7 **MS. BROCK:** So are we saying that there is no set  
8 rules yet from OAH on which items would be continued and why?  
9 There's nothing. There's --

10 **MS. MCARTHUR:** No. I don't think we're saying  
11 that.

12 **MS. SILVERMAN:** It's a case by case basis. I think  
13 that you have to analyze -- I think they're looking at each  
14 case specifically for the reasons that the request is  
15 being --

16 **MS. BROCK:** Is anyone looking at the cases that  
17 have been denied and looking at the reasons --

18 **MS. MCARTHUR:** That's my question.

19 **CHAIR SAVAGE:** Yeah. I don't know. Steve?

20 **MR. ROSENBAUM:** Could we ask from any of the judges  
21 here what -- you know, what --

22 **CHAIR SAVAGE:** Before we get there, we did get a  
23 question from the webcast so I will read it.

24 "Some cases simply take a lot of time to resolve  
25 through settlement. Seems we should desire to encourage

1 parties to resolve a case through settlement or mediation.  
2 If the parties continue to be open to additional mediations a  
3 mediation should -- a future mediation should be deemed good  
4 cause to warrant a continuance even if multiple mediations  
5 have occurred. OAH should not prevent parties to participate  
6 in multiple mediations."

7 And I think that's what we're talking about and  
8 what, Lenore, you brought up, is that your success has  
9 been -- you request a continuance but identify a specific  
10 date?

11 **MS. SILVERMAN:** Jointly. With the parent or  
12 opposing counsel. Correct.

13 **CHAIR SAVAGE:** Okay.

14 **JUDGE LABA:** I think Steven had a question about  
15 whether or not we have any data --

16 **MR. ROSENBAUM:** It wasn't so much data as just what  
17 the practice is, the rationale for granting or not granting  
18 continuances would be helpful.

19 **MS. BROCK:** I asked for data.

20 **JUDGE LABA:** Oh, I'm sorry. If we get those forms  
21 filled out and everybody signs -- even if it's just a letter  
22 and you've stipulated to dates certain for a continuance,  
23 those for the initial date are being granted as good cause  
24 right off the bat for that initial date.

25 The second one or third one will be evaluated a

1 little bit differently. But we are -- we just started  
2 tracking following the comments from Southern California. We  
3 just started tracking this week every request that we get in  
4 and we're tracking whether or not the form was used versus a  
5 regular letter, if everyone met and conferred ahead of time  
6 so we can figure out whether or not people are actually  
7 following this procedure or not and how many of those are  
8 giving us the information we need to continue the case and  
9 when we are denying it what the reason was that we're  
10 denying. So we are tracking that so we can have some actual  
11 data. Because I hear a lot of the anecdotal information but  
12 I need some real hard numbers as to what percentage of cases  
13 are we having a problem in. So -- and whether they're coming  
14 from parent versus attorneys, things like that. We are  
15 tracking that and I will have data that I can look to and  
16 helping us make a decision about which direction we're going  
17 to go.

18 **CHAIR SAVAGE:** Okay. And I think -- I think one of  
19 the issues that I will be putting on the table to vote on is  
20 that what Judge Laba just talked about and the second and  
21 third situation. Where it's going to be evaluated because  
22 it's not just the parties agree -- we're getting a  
23 continuance. Get a position from OAH what constitutes good  
24 cause.

25 **MR. CORBIN:** While Judge Laba's there -- I think

1 originally we had asked her to come up to talk about the  
2 definition for good cause or what OAH is using for that.

3 **CHAIR SAVAGE:** And just for those of you who are  
4 time junkies like me, we were supposed to stop five minutes  
5 ago but I think if we extend this till 10:30 and then stop at  
6 10:30 and then discuss everything else we'll have plenty of  
7 time.

8 **JUDGE LABA:** And I don't think I'm prepared to give  
9 you a definition of good cause today.

10 **MR. CORBIN:** Okay.

11 **JUDGE LABA:** I don't think I could do that for you  
12 today but there are a variety of different ways we can look  
13 at that but we're looking from -- more from you as  
14 recommendations as do we look to the California Rules of  
15 Court or do we look to a certain precedent of some court?  
16 Somewhere where you can say this is what we'd like you to  
17 look at as far as the definition of good cause. I think  
18 that's probably the better approach for us to deal with that  
19 here.

20 **MR. CORBIN:** Thank you.

21 **MR. REZOWALLI:** I think that if -- if we had -- if  
22 it came in on the right form -- if everybody signed it and  
23 there's a date, that sounds like that's going to work. If it  
24 comes in a letter format that doesn't have a cause, just that  
25 we haven't finished yet, that might not be good. Is that --

1 and so if somewhere in between is that gray area where it may  
2 or may not be and I think that's what we're looking for.  
3 Some definition so that we know what works, we know what  
4 doesn't work and how clearly defined can that gray area be?

5 **CHAIR SAVAGE:** Lenore, you wanted to say something?

6 **MS. SILVERMAN:** But it's not related to this. It's  
7 just another issue of calendaring. So if we have an  
8 opportunity I --

9 **CHAIR SAVAGE:** Sure. I'll keep --

10 **MS. SILVERMAN:** Okay.

11 **CHAIR SAVAGE:** -- keep that in mind.

12 **MS. MCARTHUR:** Could I ask -- go ahead, Susan.

13 **MS. BARDET:** In terms of good cause, you know,  
14 these kinds of cases are not like many court cases because  
15 obviously while we're trying to resolve a particular case  
16 life goes on at school. And so sometimes just quick  
17 resolution is not in the best interest of either the school  
18 district or the family because perhaps we're trying out a new  
19 program or the parents need to observe or the school district  
20 needs to observe and so it can be that for the benefit of the  
21 child and also the benefit of the school district, we really  
22 want to wait rather than rush to hearing. And I think that  
23 the feedback I've received is that there's not that kind of  
24 understanding of how these kinds of Special Ed. cases may  
25 differ from other cases that are in the court system. And I

1 think that has to be emphasized.

2 **MS. SILVERMAN:** Well, I think that's statutorily  
3 driven. You know, I think that's something that's really out  
4 of OAH's hands with the 45 day timeline. But, you know, in  
5 those --

6 **MS. BARDET:** I was talking about with joint  
7 agreement, of course.

8 **MS. SILVERMAN:** Yeah. But I would think in that  
9 kind of a situation why couldn't the matter be withdrawn and  
10 then only re-filed if there continues to be an ongoing  
11 dispute?

12 **CHAIR SAVAGE:** Because there may be a statute of  
13 limitations.

14 **MS. BARDET:** Parents like to see how things will  
15 work out rather than, you know, filing every few months.

16 **CHAIR SAVAGE:** Eliza?

17 **MS. MCARTHUR:** You know, it seems to me that the  
18 first topic we addressed bears upon the second. If the TSC  
19 is dealt with at the end of the mediation, some of this  
20 really just goes away, number one.

21 Number two, and the judge, by the way, who is  
22 sitting in on this mediation and the TSC, is probably in the  
23 best position to utilize some of that flexibility and  
24 discretion we were talking about earlier to determine whether  
25 continued mediation in this particular case does in fact

1 satisfy the good cause requirement.

2 And I think we should acknowledge and honor the  
3 very wise words of the web person whose input you read. We  
4 all want to strive toward resolution.

5 **CHAIR SAVAGE:** Right.

6 **MS. MCARTHUR:** And we don't want OAH to adopt  
7 policies that prevent that, interfere with that and so on.  
8 But it is the judge who's sitting in that seventh mediation  
9 who is probably best able to decide whether yet another  
10 mediation date or continuance of hearing -- to have another  
11 mediation date as opposed to some informal negotiations that  
12 parties can have at any time is really good cause. Do you  
13 see?

14 **CHAIR SAVAGE:** I think -- so I think -- I'm going  
15 to look over Susan's shoulder. What I want to see is I think  
16 we have a couple of issues that we want to get out there.  
17 What constitutes good cause? So in that second and third  
18 request can we get a definitive statement from OAH? Are they  
19 using the rules -- California Rules of the Court? Do we as a  
20 Committee have an opinion as to whether or not they should  
21 use the California Rules of Court? Should they continue to  
22 use case law that was used by SEHO -- the standards that were  
23 used prior to July 1<sup>st</sup>, 2005? And I think that that's kind of  
24 where we're at on the issue of is there a definition for good  
25 cause. So getting more information from OAH.

1           And then secondly, do we have a recommendation of  
2 what we want OAH to look at when they're determining good  
3 cause, whether it's in a contested request for a continuance  
4 or it's in a joint agreement.

5           Did I miss any parts of it? I feel like I did.

6           **MR. ROSENBAUM:** Not so much missing but just -- I  
7 guess -- I think we at the end of the day want to preserve --  
8 want to be sure that there's all -- that it's not a  
9 definitive -- not an exhaustive list.

10          **CHAIR SAVAGE:** Right.

11          **MR. ROSENBAUM:** So there should be examples and I  
12 think one that we want to see in there is where both parties  
13 have stipulated and come up with new dates. That ought to  
14 be, in and of itself, good cause. And there's got to be  
15 discretion ultimately. I mean it could be some other  
16 examples but there has to be discretion at the end of the day  
17 so we don't have an exhaustive list.

18           And I'm guessing also that even if you look to the  
19 Federal or State Rules of Court, you're going to see case  
20 law. You'll see these very vague terms. You're going to see  
21 case law that is equally vague. It'll be, you know, the  
22 efficiency, economic economies of -- what's the phrase I'm  
23 looking for -- the judicial economy and discretion --

24          **CHAIR SAVAGE:** Okay.

25          **MR. ROSENBAUM:** -- sound discretion of the court

1 and things like that. We're probably not going to get very  
2 good answers that way, either.

3 **CHAIR SAVAGE:** So I think -- what I hear is, do we  
4 as a Committee want to recommend to OAH that when parties  
5 make a joint request for a continuance because they have  
6 whatever reason but as part of that continuance they have set  
7 -- they have agreed to future hearing dates -- that that  
8 would constitute good cause.

9 So that will be the first item -- you don't -- to  
10 all -- we don't have to all agree but what does the Committee  
11 think about having that specific thing constitute good cause?

12 **MS. BARDET:** I agree with that.

13 **MR. REZOWALLI:** Are we voting this? Okay.

14 **CHAIR SAVAGE:** Yeah. So it's mutual agreement by  
15 the parties. The parties submit hearing dates. Yes?

16 **MS. MCARTHUR:** Could I add -- or maybe this should  
17 be a separate option -- but I somehow have trouble with  
18 parties doing their own thing and not even informing OAH of  
19 the basis upon which they're doing what they're doing.

20 **CHAIR SAVAGE:** Okay.

21 **MS. MCARTHUR:** And I, you know, I hark back to kind  
22 of the Feds' view of the system.

23 **CHAIR SAVAGE:** Uh-huh.

24 **MS. MCARTHUR:** And I think we do have to honor that  
25 as well. So I think at minimum I would expect that there is

1 some basis for this and whatever basis parties provide I  
2 cannot imagine would cause the hearing office to say no if  
3 the hearing -- if the parties have in fact agreed -- stip'd  
4 to a continuance and to new hearing dates.

5 **CHAIR SAVAGE:** So let's see if I have -- so the  
6 first proposal is the parties agree to continue the hearing  
7 dates and give new hearing dates.

8 **MS. MCARTHUR:** And provide a basis.

9 **CHAIR SAVAGE:** No, that's the second proposal.

10 **MS. MCARTHUR:** That's a different option.

11 **CHAIR SAVAGE:** The first proposal is the parties  
12 agree, they give OAH a basis and they set new hearing dates.

13 Do we have any other proposals on what just that  
14 limited issue would constitute good cause?

15 Okay, so let's take a vote. Who wants -- who  
16 thinks they can do it without a basis? Without having a  
17 reason? Okay, who -- Steve.

18 **JUDGE LABA:** Okay, so there's one for the --

19 **MS. BARDET:** Well, I think it depends. Could we  
20 keep this open for discussion just a minute? And I'm sorry I  
21 was out of the room for just a minute. I think it depends on  
22 how specific the basis needs to be. And so you know, that's  
23 a good point -- so if it can be just some -- to pursue  
24 additional time for settlement, for example --

25 **CHAIR SAVAGE:** Right.

1           **MS. BARDET:** -- as opposed to, next Tuesday we're  
2 going to look at a new program.

3           **MS. SILVERMAN:** Or to complete assessment. There  
4 could be a myriad of reasons.

5           **MR. REZOWALLI:** Applicable basis.

6           **MS. SILVERMAN:** A scheduling conflict or --

7           **MS. BROCK:** I mean would a basis such as a  
8 scheduling conflict be -- I mean, what's the term basis?

9           **CHAIR SAVAGE:** Well, I think the question -- the  
10 scheduling conflict you may not get joint agreement on. So  
11 you would be having to file your own separate motion.

12           What we're -- what we're talking about right now is  
13 just you and the District agree you want to continue it  
14 because there's an assessment on Johnny that you want to  
15 complete, you want to have an IEP meeting and you want to  
16 schedule a mediation after that and you don't want to have  
17 the hearing before any of that occurs. You want to have the  
18 hearing set for four weeks after your mediation and you give  
19 -- you set that out to the OAH. The parties agree that's the  
20 process. That should be -- should that constitute good cause  
21 for a continuance?

22           The scheduling conflicts? That would fall  
23 within -- I assume one party asking for a continuance and do  
24 you -- getting from OAH what they are relying on -- what  
25 their position is on good cause for a continuance.

1           **MR. REZOWALLI:** I think we're having a lengthy  
2 discussion on the good part of good cause. We could go on  
3 forever on that. I think what you were talking about was  
4 just something there to say why you're asking for it. Which  
5 is nothing.

6           **CHAIR SAVAGE:** So let's go back. The first -- the  
7 first thing we're going to talk about is, do we want the  
8 parties to submit dates, submit a request for a continuance  
9 with no bases or justification for it or do we want parties  
10 who are jointly agreeing to a continuance to submit dates,  
11 submit a request for a continuance and give a basis?

12           So let's start with everyone who wants --

13           **MR. REZOWALLI:** There's only two options. Are we  
14 sticking with them?

15           **CHAIR SAVAGE:** Those are the only two options right  
16 now.

17           **MS. MCARTHUR:** May I just make another pitch for  
18 the latter? I guess I should be -- Stephen.

19           **CHAIR SAVAGE:** Well, we don't have to have the full  
20 consensus vote. We can say, ten people said this, one person  
21 said that. So all of those in favor of a basis being  
22 included? Okay, so that's one, two, three, four, five, six,  
23 seven.

24           All of those in favor of no basis being included?  
25 Two.

1           So the second part of this discussion which we're  
2 going to end pretty quickly is, do we as a committee want to  
3 know what OAH is using as their -- what they are looking to  
4 to determine good cause? Whether it's the Rules of Court,  
5 whether it's case law that came out of SEHO, whether it's  
6 case law the came out of the California Courts?

7           And I think that answers your question on whether a  
8 scheduling conflict --

9           **MS. BROCK:** I guess I'm looking for what is it that  
10 they are denying. You know, I mean if you can give a  
11 multitude of reasons for why you want to continue but what,  
12 if you look at the data, why are they denying the --

13           **CHAIR SAVAGE:** You know, I think that's a good  
14 question to take down to the access of information from OAH.  
15 There's been a request to have all of OAH's orders on the  
16 web. That would give us some access and so let's make sure  
17 we talk about that later this afternoon.

18           Yes. Oh, I'm sorry.

19           **1<sup>st</sup> UNKNOWN FEMALE FROM THE AUDIENCE:** Sort of on  
20 that same topic I have seen a trend lately in orders granting  
21 and denying continuances that say 'good cause is required for  
22 continuance, therefore it is denied.' '. . . therefore it is  
23 granted.' With no explanation of good cause is required,  
24 good cause exists here because, or good cause doesn't exist  
25 here because -- with no explanation of the basis, again, in

1 those orders. And I think having access to the orders is  
2 only going to be helpful if we know on what grounds they're  
3 denying or granting. And so we had a trend I think in 2005,  
4 2006. We were getting an explanation. We were getting a  
5 more substantive order. Lately they seem to be more minute  
6 orders. I've gotten like four of those in the last couple of  
7 months that just say good cause is required, it is granted.

8 **CHAIR SAVAGE:** Okay.

9 **UNKNOWN FEMALE FROM THE AUDIENCE:** Even with the  
10 format that is -- I don't know if you've seen the format with  
11 the new boxes where they just check the box. And that's not  
12 especially helpful in figuring out whether or not it's  
13 something we can apply to later cases and if we have to go  
14 through the analysis in every case it's not going to be as  
15 helpful as it would be to have some standard.

16 **CHAIR SAVAGE:** Okay. Does anyone on -- does anyone  
17 else in the public have comment on that particular issue?  
18 Having OAH expand in their orders the reason? Anyone on the  
19 Committee?

20 **MS. BROCK:** I think they should expand if they deny  
21 but I don't see any reason for them to expand if they grant.

22 **CHAIR SAVAGE:** See I think you would want it --

23 **MS. BROCK:** -- because then you can't appeal if you  
24 don't have, you know --

25 **CHAIR SAVAGE:** But if you don't know what's granted

1 you didn't know what to -- say you have four bases. You  
2 don't know what the State -- what's going to get granted.

3 **CHAIR SAVAGE:** Eliza.

4 **MS. MCARTHUR:** Okay, you just -- yeah. I mean if  
5 the basis is there and it's granted upon the basis that's  
6 there, then I suppose you're right. I just realized your  
7 example makes sense. If you have four bases only one of them  
8 may have been considered the cause. Okay. All right. Never  
9 mind.

10 **MS. BROCK:** On that note, too, I mean if both  
11 parties agree and it's denied you would need a reason but if  
12 both parties agree and it was granted I don't see any reason.  
13 But if you have one party that agrees and one that doesn't,  
14 then you would need a reason if it's granted so the other  
15 party could --

16 **CHAIR SAVAGE:** So in a contested case -- does the  
17 Committee want to take a vote that in a contested motion to  
18 continue, OAH always provide reasoning for whether good cause  
19 was granted or denied? Good cause for the continuance?

20 **MR. ROSENBAUM:** Could I make a comment, Roberta?

21 **CHAIR SAVAGE:** Sure.

22 **MR. ROSENBAUM:** See I'd be -- I'm concerned about  
23 this growing body of jurisprudence that we now are having a  
24 lot of motions and that the motions are going to have to be  
25 heftier in terms of the reasoning and on this particular

1 issue I think if OAH can delineate what generally is good  
2 cause and as long as it's not an exhaustive list, that should  
3 be the guideline.

4           And maybe having motions on the website would be  
5 good for at least selected motions but I think there's going  
6 to be a lot to sort through that's going to be this body of -  
7 - more time in writing these orders and motions and for  
8 something like good cause at least, let's put some common  
9 sense there and have some bases that are there and then take  
10 them up as need be in a given case where there's some  
11 extraordinary circumstance.

12           **CHAIR SAVAGE:** Okay.

13           **MR. ROSENBAUM:** I don't know if that's -- so I  
14 guess at the end of the day I'm saying some clear definitions  
15 -- these are examples of good cause but including but not  
16 limited to.

17           **CHAIR SAVAGE:** Okay.

18           **MR. REZOWALLI:** I think we're --

19           **MS. MCARTHUR:** And publish unique orders --

20           **CHAIR SAVAGE:** Okay.

21           **MR. REZOWALLI:** I think we're debating without some  
22 information that we need to have and that may be information  
23 we could just discuss when it's available at the next  
24 meeting.

25           **CHAIR SAVAGE:** So would we like to propose as a

1 Committee that for the January meeting we get access to OAH's  
2 current state of how they -- what they look at to consider a  
3 motion for a continuance?

4 Okay. So is that everyone? Okay. So this -- so  
5 the two things we're talking about on this -- and please tell  
6 me if I've missed something -- is one, we'd like to recommend  
7 to OAH in the first instance that seven of us think that  
8 if -- that good cause exists if parties agree, give a basis  
9 for why they agree a continuance and give hearing dates.

10 Two people don't think the basis is required.

11 **MR. ROSENBAUM:** Mine's a soft opposition.

12 **CHAIR SAVAGE:** No, it's okay. We're just going to  
13 point Steve out all the time. He's opposing it. So the  
14 second --

15 **MR. ROSENBAUM:** I don't disagree with it, it's just  
16 not --

17 **MS. MCARTHUR:** After the break Steve will be on our  
18 side.

19 **MR. REZOWALLI:** Would you put 'good' in there on  
20 the first one because you said 'good cause' as opposed to  
21 cause.

22 **CHAIR SAVAGE:** Oh, good cause. It should probably  
23 be good cause. Yes.

24 So the second is we recommend as an entire  
25 Committee that before the January meeting OAH post what it is

1 they look to for -- what constitutes good cause in any case.

2 Okay. And then do we want to leave the issue of  
3 whether OAH should include an analysis each and every time?  
4 Do we want to address that now or do we want to carry that  
5 over to January?

6 **MR. CORBIN:** I would suggest carrying that over to  
7 January because maybe the information they provide will be  
8 sufficient but --

9 **CHAIR SAVAGE:** Okay. And then before we move on,  
10 Lenore, you had a question on the calendaring?

11 **MS. SILVERMAN:** I did. And I just wanted to raise  
12 this briefly. We can certainly table it because it wasn't on  
13 our agenda but that has to deal with pre-hearing conferences  
14 and how they're scheduled. I just want to raise an issue.

15 We have a district who is representing themselves  
16 and a parent who is representing themselves and an order was  
17 just received for a pre-hearing conference because a date was  
18 not set. And the date was set within the three day time  
19 period of getting the -- serving the other side with the pre-  
20 hearing conference statement. So I think that there's an  
21 issue that I have of about how those dates are being derived  
22 at and if the party has to provide a pre-hearing conference  
23 statement three days before the pre-hearing conference but  
24 the notification is within that time period that that's a  
25 problem.

1           So I think that I'd like to just raise this for  
2 maybe future discussion or if we have time, today.

3           **CHAIR SAVAGE:** Let's see if we can talk about it  
4 today because I've had someone else talk to me about that.  
5 So the PHC dates -- so we're just about 20 minutes behind. I  
6 think we're done with the calendaring, at least as far as  
7 we're going to get today on the issue.

8           So we're going to move on to Topic D on the Agenda.

9           **MS. BARDET:** Don't you want us to vote on that? On  
10 the recommendation? Before the January meeting. For this  
11 one.

12           **CHAIR SAVAGE:** Oh. Okay. So we want to get just a  
13 showing of hands before the January meeting OAH will give at  
14 least our Committee if not the public access to what they're  
15 definition of good cause is. Everyone who agrees with that?

16           Lenore, you don't agree?

17           **MS. SILVERMAN:** Yes. I have my hand up.

18           **CHAIR SAVAGE:** Okay. Excellent. Okay, so it's a  
19 unanimous request -- recommendation.

20           Okay, so now we're on to hearing procedures.  
21 What -- how we're going to format this is the -- if the  
22 member is here who raised the issue to put it on the agenda,  
23 they're going to kind of raise the issue. And we'll go  
24 through each of these in order. I will start by again,  
25 anyone in the audience -- you're so spread out. If you have

1 a comment we're going to start with whether or not a hearing  
2 should be recorded by a court reporter. So if there's any  
3 public comment we'd like to take that first. If there's any  
4 webcast comment, if it's available first, otherwise we'll get  
5 it throughout. Otherwise I'm going to turn it over to Dana  
6 and let her raise the issue and then have some discussion  
7 about it. So --

8 **MR. ROSENBAUM:** Just a question, Roberta. So  
9 you're asking on each of these bullet points to be separate  
10 comments or will it be taken altogether and then --

11 **CHAIR SAVAGE:** Separate comments.

12 **MS. JOHNSON:** The reason that I raised the issue of  
13 the hearings to be recorded by a court reporter is, again,  
14 due to a, you know, one time situation that I spent in a  
15 five-day hearing. And there was an issue that came up that a  
16 witness had testified to something that I -- when it was my  
17 turn to then, I guess, cross examine her -- pardon me if I'm  
18 not speaking the proper legal terminology. But then when it  
19 was my turn the attorneys objected to -- said something asked  
20 and answered and the judge said no, that question was never  
21 asked. And it's like yes, that it was asked -- it was asked  
22 and she had answered and I wanted her to clarify her answer.  
23 So then the judge and I -- I found myself arguing with the  
24 judge because the question was asked. She said that just in  
25 the statement alone weighed heavily on the case because she'd

1 -- the witness had made the comment that the IEP -- that she  
2 couldn't implement my daughter's IEP due to the simple fact  
3 that I had filed for an OAH due process hearing. So I just  
4 wanted her to clarify, you know, what, how on earth did that  
5 prevent her from implementing my daughter's IEP. And so the  
6 question that was never addressed was unable to address the  
7 situation because the judge said that it didn't exist. And  
8 later, of course, when I received the transcripts much time  
9 had already passed by and it was too late. Then we had  
10 already had a ruling and so, therefore, that definitely  
11 impacted the outcome of the case.

12 **CHAIR SAVAGE:** Okay, so the issue is for clarity of  
13 the testimony online I'm hearing --

14 **MS. JOHNSON:** I found out that, you know, listening  
15 in on last Wednesday -- I was listening to a lot of the  
16 comments and I was, you know, participated somewhat in the  
17 Southern California's OAH meeting and I realize that cost is  
18 a big issue. So as I gave a little bit more thought into  
19 that, you know, if there is this cost issue that we're  
20 talking about, then is it just a possibility because I know  
21 we will, you know, not to skip ahead, but, you know, it  
22 seemed like there was a big agreement on taping the pre-  
23 hearing conference so why not be able to just allow them,  
24 especially an unrepresented parent -- you know, I don't even  
25 know if it's possible. Could I have been taping this the

1 whole time and played it back for the judge and said, there,  
2 you were clearly, you know, mistaken. Your recall was  
3 totally incorrect.

4 **CHAIR SAVAGE:** Well, and before I get to Eliza, I  
5 make a practice of taping hearings on a regular basis so --

6 **MS. JOHNSON:** Okay.

7 **CHAIR SAVAGE:** -- I think parties just need to know  
8 that, particularly unrepresented parents, and it's made clear  
9 at the beginning of most every one of my hearing that my  
10 recording is not the official record. So there still may be  
11 -- there still may be an issue with the judge if you're  
12 playing back a recording saying this is what happened. But I  
13 think you just need -- I think you just need to let the  
14 parties know. Put it out there and typically the judges have  
15 no problem with it as long as it doesn't interfere with  
16 (inaudible).

17 Eliza? Eliza and Lenore. So I'm going to start  
18 with Eliza and then I come to Lenore and then it looks like  
19 Tamara. So Eliza.

20 **MS. MCARTHUR:** Just a quick question, actually for  
21 you, Dana. Because of the -- what could be a fairly  
22 extraordinary cost to taping these proceedings -- pardon, to  
23 having a court reporter -- in polling parents and the people  
24 whose interest you're representing, have you found this to be  
25 an issue for others?

1           **MS. JOHNSON:** Yes, I absolutely have. I have met  
2 with a local organization that are -- that have been through  
3 the process actually before I did and they -- that was one of  
4 the big issues they raised at the same -- simultaneous with  
5 myself. And so therefore it has come up before.

6           And again, this -- I just give one example of what  
7 happened in this five-day due process hearing that -- but  
8 there's several more that actually -- you know, ones I have  
9 obtained the transcripts, you know, post -- but then at the  
10 same time, then when it talks about cost my concern is well,  
11 maybe there's that cost then but it sure costs a lot more if  
12 you have to -- then you have grounds for an appeal. But to  
13 come up with \$30,000 to \$60,000 to start an appeal process  
14 that if the student is already unrepresented they obviously  
15 could not afford that. And I mean that's just -- that's a  
16 huge magnitude for an unrepresented student to have to be  
17 facing all because of human error.

18           **CHAIR SAVAGE:** Right.

19           **MS. JOHNSON:** So to me, I think it's something that  
20 could be cost efficient or my biggest thing is then if that's  
21 to eliminate the cost -- again, I try to be proactive --

22           **CHAIR SAVAGE:** Right.

23           **MS. JOHNSON:** -- you know, I'm a taxpayer as well.  
24 So then if we were to have this recorder in the --  
25 understanding that you can record, can that actually be used

1 there at the moment in court? Can we rewind and play it for  
2 the judge? That would be, you know, then that would be cost  
3 efficient and it would be able to address the issues.

4 **MS. MCARTHUR:** Right. Exactly. I think that the  
5 taping does address the issue, I think, whether the judge  
6 will listen or how much the judge will listen -- how much of  
7 the recording the judge will listen to is within the judge's  
8 discretion. I just cannot imagine that a reasonable  
9 person -- a reasonable judge who is having to remember or  
10 gain or glean from his or her notes what happened four days  
11 earlier would not want to listen to a small portion of the  
12 tape recording that you have ready to remind the judge and  
13 the rest of the people -- parties and attorneys of what  
14 actually has happened so I think that that very much takes  
15 care of it.

16 **MS. JOHNSON:** And I also was concerned --

17 **CHAIR SAVAGE:** Oh. Hold on. Lenore wanted to get  
18 something in, too, so --

19 **MS. SILVERMAN:** Well, thank you. And I agree with  
20 what Eliza has said and I understand the issues about your  
21 concerns, Dana, and it's -- but it's also so cost prohibitive  
22 to have a court reporter. But one of the things that I  
23 thought I had offered in the agenda and I don't see it -- and  
24 maybe I was just remiss in not noting that earlier --

25 **CHAIR SAVAGE:** Is the digital recordings?

1           **MS. SILVERMAN:** -- is the digital recordings.

2           **CHAIR SAVAGE:** It's not on there.

3           **MS. SILVERMAN:** Okay. And I think that that's  
4 really relevant. I know that when OAH first took over the  
5 hearing office and Carl Engeman came and spoke with a group  
6 of people, one of the things that was discussed was the  
7 possibility of getting copies of the digitized recording. So  
8 in other words that should not be that costly if the hearing  
9 is being recorded digitally you can download that and on a --  
10 you know, just on a little stick drive and then just upload  
11 it into your computer. That shouldn't be that costly or  
12 difficult to do if the parties request it. And that's  
13 something that I would like to get a response to, almost like  
14 you can get a daily transcript of if you're in trial. It  
15 would be getting like a daily transcript or copy of the  
16 digital recording from the proceeding. So that's something  
17 that I'd like to bring up.

18           **MS. JOHNSON:** And then once again, that's another  
19 cost. You know I have come across numerous parents that  
20 don't actually have access to a computer. You're talking  
21 about downloading something, uploading things into -- then  
22 again, we're talking about, you know, some people that are at  
23 a distinct disadvantage also in a financial manner and not  
24 just for representation.

25           So again -- and I was also concerned -- I'm very

1 unfamiliar with the process -- the digital recording to begin  
2 with. Is that what's going on when the judge is at the  
3 laptop and he's -- I was like, is he playing a video game?  
4 Is he in a chat room? I couldn't figure out what was --  
5 because, like is that why he's so glued -- was so glued to  
6 what he was doing? How could he be listening? Is he -- he's  
7 a phenomenal multitasker? I was just -- wasn't sure.

8 **CHAIR SAVAGE:** I think most judges --

9 **MS. JOHNSON:** As a parent I have no idea.

10 **MS. BROCK:** First -- sorry, I've tried to speak for  
11 a while. First, you can request a copy of the CD before the  
12 hearing is even over and get it within a few days. So if  
13 they're taping the hearing and your hearing ends on a Friday,  
14 you don't have to wait until you get a decision and you get  
15 and request a transcript. You can actually get a CD before  
16 you even write your hearing decision.

17 **MS. JOHNSON:** You mean the transcript, Tamara?

18 **MS. BROCK:** You can get -- you wouldn't get the  
19 transcript because that takes I think 30 days --

20 **MS. JOHNSON:** CD transcript?

21 **MS. BROCK:** You can get a CD of the recording of --

22 **MS. JOHNSON:** Okay.

23 **MS. BROCK:** -- the hearing.

24 **MS. JOHNSON:** Because it took two weeks.

25 **MS. BROCK:** But they don't tell you that. No, it

1 only takes a few days.

2 **MS. JOHNSON:** Well, when I requested it, it took  
3 two weeks and --

4 **MS. BROCK:** Well, then that's a problem. But I  
5 have to say I would never go to hearing again without a court  
6 reporter whether or not I had to pay for it or not. I've  
7 been through two hearings. The first ALJ would not allow me  
8 to tape and she lost very, very critical testimony and when I  
9 had my second hearing, same thing. You know, lost hearing --  
10 you know, recording and it seems to be a systemic problem  
11 that I never heard from SEHO. I never heard SEHO ever had  
12 any problem -- oh, you did?

13 **MS. JOHNSON:** Absolutely.

14 **MS. BROCK:** Well, maybe because I'm a little more  
15 connected now, you know, with the different organizations. I  
16 hear of it all the time. And I'm wondering if OAH keeps data  
17 of all the tapes that haven't been properly recorded because  
18 I know after my hearing the same hearing officer lost tapes  
19 of another hearing and it's -- or didn't record properly --  
20 so for, you know, in my case I would never go to hearing  
21 again without a court reporter. I'm tired of the human  
22 error.

23 **CHAIR SAVAGE:** Okay. So let's see if we can come  
24 up with the issues the Committee has raised -- if there's any  
25 additional public comment? There is. Run on down. You're

1 the next contestant on this game.

2 **UNKNOWN FEMALE FROM AUDIENCE:** You know, I've only  
3 appealed once case and ordered one transcript. So I don't  
4 have a lot of data. But in that one appeal there was an  
5 entire witness's testimony that was not contained.

6 **CHAIR SAVAGE:** Okay.

7 **UNKNOWN FEMALE FROM AUDIENCE:** So I think it is a  
8 concern and I think part of the concern is that all judges do  
9 allow people to make a digital recording during the time --  
10 or tapes or whatever they want to use so that there is that  
11 backup. Because it was just lost. There was nothing we  
12 could do about it.

13 **CHAIR SAVAGE:** Okay.

14 **MS. BROCK:** That should be a given. It shouldn't  
15 be you even have to ask the judge if they can -- if you can  
16 record. It should be you're allowed to record.

17 **CHAIR SAVAGE:** Okay. And we have one more. Yes?

18 **UNKNOWN FEMALE FROM AUDIENCE:** We have had at my  
19 firm in the last three years, ten appeals with missing or  
20 partially missing transcripts. I understand that court  
21 reporting is a huge financial burden. But it's not as much  
22 of a financial burden as the two cases we've had remanded  
23 back to OAH to repeat testimony.

24 **CHAIR SAVAGE:** Okay.

25 **UNKNOWN FEMALE FROM AUDIENCE:** That is a huge

1 financial burden on not just OAH who has to again provide a  
2 judge for a hearing, for a pre-hearing conference, for a  
3 trial setting conference -- all of those things. But also  
4 for both sides who have to go back and re-prep witnesses --  
5 sometimes two years later because we've been in Federal Court  
6 this whole time to remand a case. We've had -- we have two  
7 cases currently on (inaudible). That's because of  
8 transcripts. We've had multiple cases settle with missing  
9 transcripts. We are digitally recording and when we find out  
10 in the hearing that the system has malfunctioned we can  
11 stipulate to fix that now with digital recordings of our own.  
12 But it has been a huge financial burden for our clients. And  
13 so as much as we know that court reporters cost a lot, we do  
14 believe it's in everybody's best interest to have court  
15 reporters present in hearings.

16 **CHAIR SAVAGE:** Okay. And I want to make a comment  
17 and then you have -- oh, do you have a question?

18 **MR. ROSENBAUM:** I have a question. So this is the  
19 same -- the written transcript -- I mean there was -- because  
20 the recording had been --

21 **UNKNOWN FEMALE FROM AUDIENCE:** Correct.

22 **MR. ROSENBAUM:** -- lost no written transcript could  
23 be prepared.

24 **UNKNOWN FEMALE FROM AUDIENCE:** Right. Correct.

25 **MR. ROSENBAUM:** In two different case -- how many

1 different cases?

2 **UNKNOWN FEMALE FROM AUDIENCE:** We have ten cases  
3 that have some testimony missing. And that's everything from  
4 an hour to three days.

5 **MR. ROSENBAUM:** Wow. And this is in the last year?  
6 Two years?

7 **MS. BROCK:** We had a four day. Four days missing.

8 **UNKNOWN FEMALE FROM AUDIENCE:** Yeah. We've had  
9 everything up to three days. And the two cases we've had  
10 remanded had a full day of a two and half day hearing and  
11 three days of a four-day hearing missing. And because there  
12 has to be a transcript produced for Federal appeal, we -- it  
13 gets very expensive.

14 **CHAIR SAVAGE:** I'm going to pop in a webcast  
15 comment real quick and I'm guessing it's a person Dana spoke  
16 with. "Yes, this is a serious problem. Please listen to our  
17 Northern California representative." So I -- Eliza, I'm  
18 going to get your comment.

19 **MS. JOHNSON:** For Tamara though, too, she's a  
20 Northern parent, too.

21 **CHAIR SAVAGE:** Oh. Or any of us. So whoever it is  
22 I think -- I agree, I think it is a big problem. I had a  
23 hearing four days out of five and half were gone. No tape.  
24 You couldn't record over -- the tapes were missing.  
25 Everything was gone.

1           **MS. MCARTHUR:** I mean, look. I think if tapes are  
2 lost it's a big problem. We can all agree on that. If the  
3 agency that transcribes the tapes for the hearing office  
4 messes on a number of pages in critical testimony, that's a  
5 no-brainer. It's a problem. The question is, what is the  
6 appropriate solution --

7           **CHAIR SAVAGE:** Right. Right. Right.

8           **MS. MCARTHUR:** -- that is cost effective and I  
9 think the question that I've had for our colleague -- I'm  
10 sorry, who are you?

11           **UNKNOWN FEMALE FROM AUDIENCE:** I'm Sarah  
12 (inaudible).

13           **MS. MCARTHUR:** Hi, Sarah. -- is whether you taped  
14 and whether the taping that we've been talking about by  
15 parties -- so long as we can be assured that indeed it's  
16 permitted in every single situation --

17           **CHAIR SAVAGE:** Right.

18           **MS. MCARTHUR:** -- would not in fact solve that  
19 problem.

20           **UNKNOWN FEMALE FROM AUDIENCE:** The problem is  
21 (inaudible).

22           **CHAIR SAVAGE:** Right. Well, I think what Sarah's  
23 going to talk about is the difficulty with it not being the  
24 official record and so on appeal you don't have an official  
25 record. The parties would have to stipulate and could you

1 get something to make it quote -- the official record.

2 **MS. MCARTHUR:** But that's something that I think  
3 can be dealt with with the judge because I --

4 **UNKNOWN FEMALE FROM AUDIENCE:** We've tried. In one  
5 of the cases I currently have on remand we did have tapes.  
6 They were actually the parents' tapes, not the District's  
7 tapes.

8 **MS. MCARTHUR:** Uh-huh.

9 **UNKNOWN FEMALE FROM AUDIENCE:** The District  
10 stipulated to use those and the parent refused to use those  
11 to complete the record. So without a stipulation --

12 **CHAIR SAVAGE:** Right.

13 **UNKNOWN FEMALE FROM AUDIENCE:** -- we went to the  
14 judge in Federal Court, asked for different methods of  
15 completing that record and they remanded anyway.

16 **MS. MCARTHUR:** Right. Because you didn't have a  
17 stip. I mean I --

18 **UNKNOWN FEMALE FROM AUDIENCE:** Right. So -- I mean  
19 we did have the tapes. We, you know, had everything in place  
20 that we could possibly have but without a stipulation you  
21 can't force that on the parties and the Federal judge won't  
22 overrule that without a stip. And so --

23 **MS. MCARTHUR:** Right.

24 **UNKNOWN FEMALE FROM AUDIENCE:** -- they will remand  
25 anyway so the court reporter is the only way to make it the

1 official record.

2 **MS. MCARTHUR:** I think -- but in how many cases --  
3 I mean, you know, I'm no mathematician. You mentioned that  
4 these remands are very, very costly. I presume that they are  
5 indeed. But in how many cases are you in a situation where  
6 so much gets lost there's no stip for the Federal judge to  
7 consider that one or both of the tape recordings will be  
8 utilized for the transcript. How many are these? I mean,  
9 you're talking about having a court reporter at every single  
10 hearing, you know? I mean --

11 **UNKNOWN FEMALE FROM AUDIENCE:** To me, though, every  
12 single --

13 **MS. MCARTHUR:** Well, at least there's some kind of  
14 a backup system and I -- my -- it was my understanding --

15 **MS. SILVERMAN:** Yeah, it was my understanding that  
16 there was a dual recording system in place. That there was a  
17 backup system and so I'm wondering -- are we having a failure  
18 of not only the primary but the backup? There absolutely  
19 needs to be a backup system and I know that there's been  
20 issues in each hearing that I've participated in but it's  
21 been for a small period of time. But there needs to be a  
22 backup system and we need to make sure -- I mean it is  
23 absolutely too cost prohibitive to have A, a court reporter,  
24 but to have to re-do a hearing? That's -- that's obscene.

25 **UNKNOWN FEMALE FROM AUDIENCE:** So that was my

1 question having never been to a hearing but having some  
2 recollection of the Federal system that always has two  
3 systems running at the same time. For backup. For those  
4 very purposes and I just assumed that happened at OAH.

5 **MS. SILVERMAN:** Well, Marion, I think we need  
6 assurances that --

7 **UNKNOWN FEMALE FROM AUDIENCE:** Something's  
8 happening.

9 **CHAIR SAVAGE:** So, let's --

10 **UNKNOWN FEMALE FROM AUDIENCE:** And also a question  
11 that you don't have to answer --

12 **CHAIR SAVAGE:** Right.

13 **UNKNOWN FEMALE FROM AUDIENCE:** But I would -- was  
14 wondering if Lenore's question would not a digital recording  
15 system go a long way to eliminating these problems?

16 **CHAIR SAVAGE:** Right. So I think we have -- I want  
17 to start moving on. So I think we have a couple topics.  
18 One, do we have -- do we recommend court reporters at every  
19 hearing? Two, do we not recommend court reporters at every  
20 hearing? Three, do we recommend that every recording has an  
21 identified backup in place? Four, do we recommend that all  
22 parties be told at the outset they are permitted to tape  
23 record digital, whatever? And I think the fifth is access.  
24 Do we recommend that OAH give the parties access to the  
25 digital recording within a certain number of days so that if

1 testimony is needed to come back to, the parties have access  
2 to it.

3 **MS. MCARTHUR:** Roberta, just a slight modification  
4 on four.

5 **CHAIR SAVAGE:** Okay.

6 **MS. MCARTHUR:** You know, if a parent walks in --  
7 let's say an unrepresented parent walks into a hearing and is  
8 informed at the beginning of the hearing that she or he can  
9 tape record, that may be way too late if we don't have a tape  
10 recorder. So how about some -- wherever -- ahead of the  
11 game?

12 **CHAIR SAVAGE:** So number one is, do we want --

13 **MS. MCARTHUR:** Handbook.

14 **CHAIR SAVAGE:** Handbook. Okay.

15 **MS. MCARTHUR:** One of your hearing rights.

16 **CHAIR SAVAGE:** So number one is, do we want to  
17 recommend that a court reporter appear at every hearing. And  
18 if you want to make that recommendation, feel free. The  
19 Committee does not have to have unanimous decisions.

20 **MS. BROCK:** Yeah, I recommend it.

21 **CHAIR SAVAGE:** So if you still believe -- okay, so  
22 we have two.

23 The second is recommending no court reporter.

24 **MS. SILVERMAN:** I think the issue with --

25 **CHAIR SAVAGE:** So that's the remainder of the

1 committee.

2 **MS. BARDET:** What was the vote for number one? Was  
3 it --

4 **CHAIR SAVAGE:** Two people.

5 **MS. BARDET:** Okay.

6 **MS. BROCK:** I would want to stipulate that if they  
7 didn't require a court reporter that the parties could still  
8 have a court reporter.

9 **MS. MCARTHUR:** Okay, so in lieu of a court reporter  
10 present, the protections that as a Committee we would  
11 recommend would be in place one, all parties are informed at  
12 the PHC that they get to record the proceedings.

13 **MR. ROSENBAUM:** Either by tape -- either by tape,  
14 by digital recording or by bringing a court reporter.

15 **CHAIR SAVAGE:** Right. So -- okay, so how does the  
16 Committee feel about that? I would --

17 Okay, that seems to be unanimous. Eliza, do you  
18 agree?

19 **MS. MCARTHUR:** Forgive me. Yes. Yes, agree.

20 **CHAIR SAVAGE:** The other is that OAH require at  
21 each proceeding there is a recording and a backup.

22 **MULTIPLE VOICES:** Yes.

23 **CHAIR SAVAGE:** Okay.

24 **MS. BARDET:** Do we also want to specify digital?

25 **CHAIR SAVAGE:** Digital.

1           **MS. BROCK:** And the backup is considered an  
2 official recording.

3           **CHAIR SAVAGE:** Yes. Yes. The official nature  
4 comes by the judge making that recording. And then the fifth  
5 recommendation is, do we want to identify a period of time --  
6 number of days that the parties would be informed again at  
7 the PHC that upon request they would get a copy of the  
8 digital recording. I don't have a number of days. Does  
9 someone want to throw out a number of days?

10           **MS. SILVERMAN:** I would like to say that maybe on a  
11 daily basis. It just shouldn't be that difficult to upload  
12 the recording if party requested it at the end of the day.

13           **MS. BROCK:** Okay. However I think we need to also  
14 let the parties know that that's available because I did not  
15 know until, you know, too late, that I could have had a copy  
16 like three days after the hearing ended. So --

17           **MS. MCARTHUR:** Okay, so again at the PHC that  
18 could --

19           **MS. BARDET:** At the PHC and also in the handbook.

20           **CHAIR SAVAGE:** In the handbook.

21           **MS. BARDET:** And then you have two happenings --

22           **MS. BROCK:** You can actually order your transcript  
23 before you hearing ends. You don't have to wait until you  
24 get a decision.

25           **CHAIR SAVAGE:** And you can get a digital --

1           **MS. BROCK:** You can get a digital copy within three  
2 days.

3           **CHAIR SAVAGE:** Does three days sound good or do --

4           **MR. ROSENBAUM:** Why don't we leave the days open?

5           **MR. CORBIN:** Yeah.

6           **MR. ROSENBAUM:** Roberta, could we leave just the  
7 day, you know, within a reasonable time and let that be  
8 decided?

9           **CHAIR SAVAGE:** Okay. And that the parties --

10          **MS. BROCK:** I agree with that, Stephen.

11          **CHAIR SAVAGE:** Okay. So who thinks that we -- that  
12 OAH should just make their copy of the official record  
13 available on a reasonable time frame upon request of the  
14 party?

15          **MS. BROCK:** What if it just is automatic that a  
16 digital copy is available? That you don't even have to  
17 request it -- that -- I mean, it's free.

18          **MS. SILVERMAN:** The technology is there. If you  
19 provide your little drive -- thumb drive -- you know, and say  
20 you want a recording -- I mean there's no cost involved.

21          **MS. BROCK:** Right. And have --

22          **CHAIR SAVAGE:** I think it takes the party to say  
23 here's my equipment to record it.

24          **MS. MCARTHUR:** Roberta, could we just -- for those  
25 of us who do not understand technology -- could we request of

1 OAH that in deciding what is a reasonable time, Lenore's  
2 point be taken into account. In other words, that the --  
3 that we start by asking, would it be reasonable to do it the  
4 same day -- to provide the CD the same or whatever -- upload,  
5 download.

6 **MR. ROSENBAUM:** And if I could come into the --  
7 yeah, by my saying reasonable time it wasn't to -- just to  
8 suggest to give some time maybe that we later, maybe  
9 ourselves may even come up with that daily but we not pin  
10 ourselves down today. We may say daily in the end.

11 **MS. MCARTHUR:** Oh.

12 **MS. JOHNSON:** So that's something again that could  
13 be discussed at the PHC --

14 **CHAIR SAVAGE:** Right.

15 **MR. ROSENBAUM:** Yeah.

16 **CHAIR SAVAGE:** The parties are going to want a  
17 recording. How quickly are you going to want it? Do you want  
18 it that day? Do you want it at the end of the week?

19 **MS. MCARTHUR:** Oh, okay.

20 **CHAIR SAVAGE:** So a reasonable time is flexible and  
21 -- but discussed at the PHC.

22 So do we want to amend that to say at the PHC the  
23 judges would discuss the fact that digital recordings can be  
24 available and the parties would talk about when they would  
25 get a copy in a reasonable time?

1           **MR. ROSENBAUM:** If I might -- either that or this  
2 Committee could make that recommendation even in January. I  
3 guess what I'm just saying is I wouldn't today want to say  
4 three days versus one day --

5           **CHAIR SAVAGE:** Okay.

6           **MR. ROSENBAUM:** versus -- but we may --

7           **CHAIR SAVAGE:** You want to --

8           **MR. ROSENBAUM:** -- end up --

9           **MS. SILVERMAN:** (Inaudible) made available is a  
10 good start.

11          **CHAIR SAVAGE:** Okay.

12          **MR. ROSENBAUM:** As soon as possible.

13          **CHAIR SAVAGE:** Okay.

14          **MR. ROSENBAUM:** Something like that?

15          **CHAIR SAVAGE:** Okay.

16          **MR. ROSENBAUM:** As soon as reasonably practical.

17          **CHAIR SAVAGE:** And maybe we revisit this in  
18 January. To have more discussion. Okay. So does that  
19 also -- yes?

20          **KAREN SAMMAN (PHONETIC):** (Inaudible)

21          **CHAIR SAVAGE:** Oh, I'm sorry. Yes. Please.

22          **KAREN SAMMAN:** I just wanted to -- I just want to  
23 throw this out to the Advisory Committee that if this is a  
24 pervasive problem which I have never experienced as the one  
25 time there was an allegation there was review of the

1 transcript and it was fine. But if this is a problem --  
2 which I'm hearing that many people have experienced this  
3 problem, that maybe what you want to do is maybe pose the  
4 question to OAH that they look at the problem and try to  
5 correct the problem through multiple means. And maybe that  
6 they also collect data to see exactly how many cases this has  
7 happened. Because it might be with OAH in the -- in the  
8 actual recording and not having a backup. Or it could be --  
9 I don't know what company OAH uses for transcribing but it  
10 could be in the company that they're using to transcribe. So  
11 take a look at actually the system as set up in order to get  
12 these transcripts provided. So.

13 **CHAIR SAVAGE:** How does the Committee feel about  
14 making that type of request? Do you want to talk about it  
15 now? Do we want to talk about it in January?

16 **MS. MCARTHUR:** I kind of felt that it logically,  
17 Karen, ties to the recommendations the Committee is making.

18 **CHAIR SAVAGE:** I think so, too.

19 **MS. MCARTHUR:** In other words, in order for OAH to  
20 respond to the Committee --

21 **CHAIR SAVAGE:** They're going to have to look at it.

22 **MS. MCARTHUR:** -- they're going to have to do that.

23 **CHAIR SAVAGE:** Exactly.

24 **MS. MCARTHUR:** Is my sense.

25 **MR. CORBIN:** Okay, but we can put it down on the

1 table as a proposal or a recommendation --

2 **CHAIR SAVAGE:** Right.

3 **MR. CORBIN:** -- that OAH gather data regarding the  
4 recording mishaps.

5 **MS. MCARTHUR:** Sure. Sure.

6 **MS. BROCK:** I would be in favor.

7 **MS. BARDET:** I wanted to ask if there is data  
8 already because I know this was an even bigger problem  
9 several years ago.

10 **CHAIR SAVAGE:** Right.

11 **MS. BARDET:** So perhaps that's a question we should  
12 ask.

13 **CHAIR SAVAGE:** So has there been a change since --  
14 over time? Or what -- is it more of a broad -- what data  
15 exists at all as to identifying the number of hearings where  
16 the transcript is somehow impaired.

17 **MR. REZOWALLI:** Would we know that unless the case  
18 is appealed and you get a transcript?

19 **MS. BROCK:** Right.

20 **CHAIR SAVAGE:** Unless there's a request for a  
21 transcript we would not know.

22 **MR. REZOWALLI:** So how often -- what percentage of  
23 the time is request of transcript? Would you make it a less  
24 positive inference?

25 **MR. CORBIN:** I've been in a hearing where we

1 noticed that, my goodness, the machine's not working and  
2 we've got to re-create it. So it's not always going to be in  
3 a transcript level. It wasn't plugged in or it stopped. So  
4 it won't always require a transcript to know if there's an  
5 error.

6 **CHAIR SAVAGE:** Okay, so how about we talk about  
7 what do we want OAH information do we want from them by  
8 January about this issue?

9 Do we want to --

10 **MR. CORBIN:** Any data that exists on this  
11 regarding -- any data OAH is keeping regarding recording  
12 mishaps we'd like to get that and (inaudible) to request that  
13 on an ongoing basis that information be gathered and whatever  
14 they have they could share with us by January they share with  
15 us.

16 **CHAIR SAVAGE:** Okay.

17 **MS. BROCK:** You know, we were promised that this  
18 second time around that it wouldn't happen again and it did.  
19 You know, there is human error.

20 **CHAIR SAVAGE:** Right.

21 **MS. BROCK:** And I don't know if you could go back  
22 and look at each incident and say, you know, whose fault was  
23 it? Was it human error? Was it mechanical failure? But I  
24 think having the backup system in place and allowing both  
25 parties to tape should hopefully resolve the issue. We

1 should probably see very few additional problems.

2 **CHAIR SAVAGE:** Right.

3 **MS. JOHNSON:** And --

4 **CHAIR SAVAGE:** Okay, one more comment and we're  
5 going to move on because we're delaying.

6 **MS. JOHNSON:** Quickly, only again, so sorry, a big  
7 thing for me is just people that can't afford the whole  
8 process to begin with and to make available if at all  
9 possible through the OAH, you know, some loaner equipment or  
10 something for a parent to be able to tape? I don't know if  
11 that's even a possibility. Again just speaking of -- for  
12 people that seriously have financial troubles that cannot  
13 afford -- and just because you can't afford doesn't mean your  
14 rights should be ignored. I feel very passionately about  
15 that. That's what really brings me here.

16 **CHAIR SAVAGE:** Okay. So do we want to make a  
17 recommendation about that? Do we want to table this  
18 particular topic for January? That being what about low  
19 income parents who don't have access to all the technology  
20 we're talking about. If they are found in this process  
21 should they be given access to technology so they can  
22 digitally record, tape the meeting if they get a digital  
23 recording, get access to a computer to listen to it. Maybe  
24 that's a January topic because that's going to spend the next  
25 twenty minutes.

1           **MS. BROCK:** You can go to your library and use a  
2 computer.

3           **CHAIR SAVAGE:** Right. Let's table this to January  
4 if we can.

5           So the next issue on our agenda because I think  
6 we've gone through everything on the recorders, is the  
7 question being presented by a community member as to whether  
8 or not the -- I want to make sure I've got it -- should the  
9 hearings be initially scheduled at the district office as  
10 they are or should they be scheduled at a neutral location?  
11 So by default on any hearing. Do we have any comments from  
12 the public on what the default location should be?

13           Okay. Any webcast --

14           **MS. BROCK:** I actually --

15           **CHAIR SAVAGE:** Now we're going -- okay. So now  
16 let's go to the committee. Does anybody -- does the  
17 Committee have a preference on the default?

18           **MS. BROCK:** We were forced to have our hearing here  
19 the first time. And it cost people twenty dollars to park.  
20 The driving to get here was obnoxious. These people had to,  
21 you know, all the staff had to take time off work -- an extra  
22 couple of hours. It really was inefficient.

23           And although I would prefer to have it in a neutral  
24 place I also believe that we have to be efficient and in  
25 order to be efficient it should be where the majority of the

1 people testifying are going to be.

2 **CHAIR SAVAGE:** Okay.

3 **MR. CORBIN:** I'd like to add to that. I agree as  
4 far as default location I think that should be at the school  
5 site. This is where the child's going. This is where the  
6 teachers are at. This is where the administrators --  
7 hopefully the parents should be living relatively close to  
8 that and to -- so set that as a default location and then  
9 again, in individual circumstances for some reason we want to  
10 look at another location then you do have the option of one  
11 of the OAH offices. But as you described that's -- it's a  
12 huge hassle not just for parents but for districts, for  
13 everybody frankly.

14 **CHAIR SAVAGE:** Okay.

15 **MS. JOHNSON:** Should the parents be able to have  
16 that option because I know I've had parents come to me and  
17 made mention to me how intimidating it is to have to go into  
18 their district office and they would prefer it to be  
19 somewhere else and I just know that that's came up --

20 **MS. MCARTHUR:** Perhaps --

21 **MS. BARDET:** I think that's --

22 **MS. JOHNSON:** I get home field advantage, you know,  
23 it's almost like the NFL.

24 **MS. BROCK:** Perhaps a school could offer several  
25 different sites within their, you know --

1           **MR. CORBIN:** On that, again I represent a lot of  
2 small school districts. We don't have a whole lot of extra  
3 sites. We're real small. We're lucky if we can get a site  
4 that's big enough to be comfortable to hold the hearing. We  
5 don't have a lot of options.

6           **CHAIR SAVAGE:** Well, even in large districts we  
7 have difficulty getting sites so I understand a parent's  
8 concern about not wanting to be -- I think in Southern  
9 California talking about the lion's den -- but I think the  
10 default -- I agree with Tamara. I agree with Carl. The  
11 default should be the district. If it needs to be changed  
12 it's more convenient for most parents to have it in a  
13 district site for their work commitments, for their  
14 witnesses.

15           It's always going to be difficult to be in a  
16 district room getting, you know, being constrained. But when  
17 you're weighing that against commuting an hour to get into  
18 Oakland's OAH office, dealing with the parking, dealing with  
19 all of the issues that you face coming into one of the  
20 offices, I think the better is having it at a district. And  
21 I do agree. I think it is difficult to ask a district to  
22 make more than one site available. I just know from personal  
23 experience. It's hard for any district and it -- if they  
24 have a location, OAH now has some pretty rigid -- not rigid  
25 but they have guidelines on how to make it run better and

1 smoother than when SEHO was operating. And I think it's just  
2 one of those things we have to live with.

3 **MS. BROCK:** Roberta, you made a good point a minute  
4 ago. What are OAH's requirements for a hearing room?  
5 Because we couldn't hold our hearing on our school site and  
6 personally I know that they have plenty of okay rooms to use.  
7 We had to travel a little bit of a distance to an off-site  
8 school and, you know, they cite it's -- it's because of OAH's  
9 rules. Yet no one can provide me what OAH's rules are.

10 **MS. SILVERMAN:** Well, I would like to -- as Roberta  
11 knows we've been through this --

12 **CHAIR SAVAGE:** We've had fun.

13 **MS. SILVERMAN:** Yes. We toured every room in the  
14 district I think. But this is a huge issue. And it's a huge  
15 issue not really knowing what the requirements are and I've  
16 got to tell you that right now we are looking at having to  
17 lease -- potentially rent space for an upcoming hearing  
18 because we can't find a room that we can set up in the way  
19 that OAH, you know, has requested that they be set up. And I  
20 really don't know what we're going to do at this point. We  
21 have plenty of rooms with a conference table that we would be  
22 able to use and we've been told that that's not acceptable.  
23 And I think at this point we're having to look at actually  
24 renting space.

25 And so I think it would be really nice to have some

1 clear guidelines.

2 **CHAIR SAVAGE:** So I think for the issue maybe  
3 that's something we can talk about in January. The issue for  
4 here in terms of a neutral location -- yes, Dana.

5 **MS. JOHNSON:** I'm wondering maybe a regional  
6 center. They often have a lot of large conference rooms.  
7 Maybe that --

8 **MS. SILVERMAN:** Conference room doesn't work.

9 **CHAIR SAVAGE:** Conference room doesn't -- yeah,  
10 it's -- what I understand and OAH is here to talk -- they  
11 want to have a table for the judge, a table next to them for  
12 the witness, facing them tables for the parties so that  
13 you're looking more of like a courtroom setup and so your  
14 typical conference room does not work.

15 **MS. SILVERMAN:** And we just had a situation where  
16 we had a fire in one of our district buildings and so now  
17 every -- every classroom is being utilized for office space  
18 and literally we are not able to find a room that we can set  
19 up in this fashion so it's really problematic.

20 **MR. REZOWALLI:** I think if we're better able to  
21 determine when our witnesses would actually be witnesses it  
22 might be a little bit easier to have it offsite. But right  
23 now they could be sitting around half a day someplace miles  
24 away from their school --

25 **CHAIR SAVAGE:** Right.

1           **MR. REZOWALLI:** -- so you have witnesses lined up  
2 and send them all home at the end of the day which I think  
3 sometimes we do but hopefully they could be at least working  
4 someplace while they're doing this.

5           The same thing is I think that it's really  
6 problematic to have for many schools -- particularly -- well,  
7 any schools to have it at their site because you have bells  
8 going off, you have kids running around at recess. It's --  
9 I've tried to set up rooms at school sites and just -- you  
10 think you had a good room set up and the bell would ring and  
11 you'd realize you can't record this thing. And it is  
12 difficult because you need about half a classroom -- I'd say  
13 that size. You can't use a conference room. Typically  
14 district offices don't have that size of rooms available.  
15 Maybe they have one for large group meetings --

16           **CHAIR SAVAGE:** It's a conference table.

17           **MR. REZOWALLI:** It might have a conference table.  
18 It might be for in services where it's smaller than an  
19 auditorium but bigger than a classroom -- it just -- there's  
20 a few. The district I work in -- one of the districts is  
21 15,000 students and I'm lucky if I have one or two options  
22 for hearing rooms.

23           **CHAIR SAVAGE:** Okay. So we are pushing at half  
24 hour left before our lunch break so I'm going to kind of move  
25 us along. Do we have a recommendation to change the default?

1 The default being it's set at a district office. So does the  
2 Committee agree that the default should remain at the  
3 district office? Showing of hands.

4 Unanimous.

5 Okay. The next topic and this is again for Dana.  
6 But we'll start with any public comment or web comment.  
7 Should the PHC's or the pre-hearing conferences always be  
8 recorded? And if anyone has a feedback on that? Otherwise I  
9 will just turn it to Dana.

10 I think it's pretty straightforward.

11 **MS. JOHNSON:** Sure. Absolutely. The pre-hearing  
12 conference -- I think it just should be absolutely taped and  
13 so a parent can actually refer to it and especially in my  
14 situation would have been very helpful had I had it taped and  
15 that I would (inaudible) to be better prepared to go into  
16 court. And it was a lot of information in a very short  
17 amount of time to try to retain and especially I felt like I  
18 was backpedaling the majority of the time. So I think it  
19 would be just extremely helpful especially for unrepresented  
20 students.

21 **CHAIR SAVAGE:** And I think this would be a good  
22 time for when we're asking -- talking about the digitalized  
23 recording, you know, the reasonable time. When can a party  
24 get access to that? You're going to want it before a  
25 hearing. Eliza?

1           **MS. MCARTHUR:** Just a question. I thought at this  
2 point it is routinely or every PCH recorded.

3           **CHAIR SAVAGE:** I don't think so.

4           **MR. CORBIN:** And Judge Laba's shaking her head no.

5           **CHAIR SAVAGE:** So --

6           **MS. MCARTHUR:** Then we shall recommend it.

7           **CHAIR SAVAGE:** Okay, so the two --

8           **MS. BROCK:** Not only should it be recorded but it  
9 should also be transcribed because we had ours recorded but  
10 not transcribed. But my comment on the -- whether they  
11 should be recorded or not is absolutely.

12           **CHAIR SAVAGE:** Okay, so as a Committee do we  
13 recommend OAH record every pre-hearing conference?

14           **MR. ROSENBAUM:** I have a question first. But  
15 there's always an order -- there's a written order following  
16 every pre-hearing conference, right? In all cases?

17           **CHAIR SAVAGE:** But it's not a comprehensive order  
18 talking about everything -- I mean it's more of a summary  
19 order.

20           **MR. ROSENBAUM:** Yeah.

21           **CHAIR SAVAGE:** So I think that the difference would  
22 be getting more specific details.

23           **MS. BROCK:** I found in the pre-hearing conference  
24 it appears as if the ALJ agrees one way and then you get the  
25 order and it's completely different. And without having that

1 recording or the transcript you aren't able to, you know,  
2 contest what was actually said.

3 **MS. JOHNSON:** Do we need backup on this as well?

4 **CHAIR SAVAGE:** I think --

5 **MS. JOHNSON:** We were talking about backup. If  
6 there's again one single one recording.

7 **MS. BROCK:** And both parties should be able to  
8 record it as well.

9 **MS. MCARTHUR:** Well, I think that that hasn't been  
10 an issue as long as there -- you tell the judge in advance  
11 that you're recording -- that you want to record the  
12 proceeding and that might be something that we, you know,  
13 have clarified as well, that if you start and say, you know,  
14 I'd like to record this proceeding -- just so there's  
15 knowledge by all the -- because you do it by phone. That  
16 there's knowledge by all the parties that there's a recording  
17 being done.

18 **MR. CORBIN:** As a legal matter all the parties have  
19 to agree to this.

20 **MS. SILVERMAN:** That's right.

21 **MR. CORBIN:** It's more than just acknowledgement.  
22 I mean I have to agree.

23 **MS. SILVERMAN:** That's right.

24 **CHAIR SAVAGE:** And I know logistically if a part --  
25 I just -- I'm technologically challenged to know how I would

1 record when I'm on the phone the PCH unless it's on a speaker  
2 phone. It's going to be bad quality. I would much prefer to  
3 rely on OAH recording that and giving me a recording --

4 **MS. SILVERMAN:** A reasonable recording.

5 **MS. BROCK:** But I think you should have that  
6 option. Because then you can go back and in case there's  
7 also a failure you have a recording to rely on.

8 **CHAIR SAVAGE:** Okay. So let's kind of combine this  
9 with the last issue --

10 **MS. BROCK:** (inaudible) going back to that if --

11 **MS. JOHNSON:** You know, someone low income might --  
12 may not have a speaker phone again or the -- access to the  
13 technology to have a recording of it so really that kind of  
14 falls more with the OAH.

15 **CHAIR SAVAGE:** Okay so let's kind of combine this  
16 with the prior issue of court reporters. Do we as a  
17 committee think all OAH pre-hearing conferences should be  
18 recorded?

19 A showing of hands if you think it should be  
20 recorded. Is that -- Steve, are you voting yes?

21 **MR. ROSENBAUM:** I'm voting no.

22 **CHAIR SAVAGE:** You're voting no.

23 **MR. ROSENBAUM:** Let me explain why.

24 **CHAIR SAVAGE:** Okay, so --

25 **MS. MCARTHUR:** Well, you must.

1           **MR. ROSENBAUM:** I must explain. No, I just -- I  
2 mean, again, I see it as a time issue, a storage issue, a  
3 cost issue. It seems to me that there's issues after the --  
4 if there's disputes after a written order is received that  
5 those could be resolved first day of hearing or if need be  
6 with a second phone conference. Again I'd be concerned about  
7 sort of spawning additional litigation on what really should  
8 be a case management conference for administrative needs but  
9 I understand some substantive decisions are made in that  
10 context. But rather than have that be done by recording  
11 which that means you have to listen to the tapes and maybe  
12 transcripts are provided and then there's a hearing on that,  
13 that there be some other way to resolve disputes before the  
14 hearing actually begins. That would be more efficient.

15           **MS. JOHNSON:** What came up, too, is that sometimes  
16 there is one judge for the pre-hearing conference and then  
17 there is another judge when you actually get to the due  
18 process hearing so therefore that's came up as a conflict as  
19 well. So again why the recording -- that's why -- not to  
20 oppose you either --

21           **MR. ROSENBAUM:** No.

22           **MS. JOHNSON:** -- that was why I'm pushing for this  
23 situation as well. Just for that simple reason if the -- if  
24 it's not the same judge.

25           **MR. ROSENBAUM:** Are you saying that -- can I

1 just -- are you saying because it's a different judge that's  
2 a conflict in and of itself or that it's just a different --  
3 then it's a different ruling that's made about some  
4 preliminary matter?

5 **MS. JOHNSON:** Just a different, you know, a  
6 different recalls of, you know, if there's -- a judge has  
7 some certain notes possibly or, you know, just sort of the  
8 order that's issued after the pre-hearing conference and, you  
9 know, so one's interpretation can be different than the  
10 other. At least then we have it on a recording so we --

11 **MR. ROSENBAUM:** Well, again I would say that I  
12 think that should just again be resolved with the parties if  
13 it needs another phone conference or --

14 **CHAIR SAVAGE:** Okay. I'm going to cut you off  
15 because we're not going to get through our list.

16 **MS. BROCK:** I just have a quick comment that if you  
17 agree to a witness on a pre-hearing conference and then the  
18 order said differently you have a recording then of that  
19 issue -- you don't want to wait till the first day of hearing  
20 and find out you can have that witness and then they're not  
21 available. So I just think it should be standard practice.

22 **CHAIR SAVAGE:** Okay. So we've -- we recommended  
23 that they be recorded except for Steve -- do we recommend  
24 that if they're recorded that the parties be given access --  
25 reasonable access to a copy of them? Okay.

1           **MS. BARDET:** What was the vote on that? Okay.

2           **CHAIR SAVAGE:** And I think that covers -- the next  
3 issue -- and I think I'm just going to --

4           **MS. BARDET:** Yes. We have two more.

5           **CHAIR SAVAGE:** Can -- do we want to recommend that  
6 parties could have the ability -- the option to record but  
7 they would have to let everyone know at the beginning of the  
8 recording that they are going to record?

9           **MS. MCARTHUR:** Yes.

10          **MS. BROCK:** And have agreement.

11          **CHAIR SAVAGE:** And the parties would have to agree.

12          **MS. JOHNSON:** I -- I don't think they need to  
13 agree. I think it should be --

14          **MR. ROSENBAUM:** Notice, isn't it? Carl, where is  
15 the basis for that agreement?

16          **MR. CORBIN:** Again, I don't have the legal research  
17 right here in front of me but my understanding is more than  
18 just acknowledgement. That there's an actual permission  
19 associated with it.

20          **MS. BARDET:** But if it's being recorded by the  
21 Court --

22          **MS. SILVERMAN:** If it's being recorded.

23          **MR. CORBIN:** I hear you but that's separated and  
24 distinct from having a private record that then someone could  
25 do some --

1           **CHAIR SAVAGE:** Okay.

2           **MR. CORBIN:** Again we could research.

3           **CHAIR SAVAGE:** So you can -- and you can vote no.  
4 So should the parties be given the option to record?

5           **MS. BARDET:** Wait. The option to --

6           **MS. BROCK:** -- to do their own personal recording.

7           **MR. ROSENBAUM:** With notice to others.

8           **MS. BARDET:** With -- with notice?

9           **MS. MCARTHUR:** With whatever is legally required.

10          **MS. SILVERMAN:** Whatever -- whatever the law  
11 states.

12          **MS. BROCK:** They should be allowed.

13          **CHAIR SAVAGE:** Okay, so Tammy yes, Steve yes, Dana  
14 yes. Okay, so three yes.

15                 The parties should not be given the option of  
16 recording. One, two, three, four -- Eliza, how do you vote?  
17 Record - option --

18          **MS. MCARTHUR:** We're just voting on the lesser  
19 option which is not to record.

20          **CHAIR SAVAGE:** Not to record.

21          **MS. MCARTHUR:** Correct. Sorry.

22          **CHAIR SAVAGE:** Yeah.

23                 And then the final is should we recommend to OAH  
24 that much like at the hearing, they have a backup recording?

25          **MS. BARDET:** If they record.

1           **CHAIR SAVAGE:** If they record they have a backup  
2 recording. Oh, yeah. Okay. So it's yes to all.

3           **MS. BROCK:** Then how are they going to get the  
4 recording to the parties? Because the pre-hearing conference  
5 is done, you know, so close to when the hearing is going to  
6 be set and if there is a dispute once the order is written,  
7 if the parties aren't making their own recording --

8           **CHAIR SAVAGE:** I -- that's a good question I think  
9 we need to leave to January because --

10          **MS. SILVERMAN:** I think so, too, but I think for  
11 consideration if it's digital there shouldn't be even any  
12 problem just sending it on a file over email.

13          **MS. MCARTHUR:** Except for --

14          **MS. SILVERMAN:** Understood.

15          **MS. MCARTHUR:** You know, the --

16          **MS. SILVERMAN:** That's the ongoing issue.

17          **MS. MCARTHUR:** -- whom Dana is mentioning.

18          **CHAIR SAVAGE:** Right. Okay, so our next issue is  
19 how can OAH help unrepresented parents access witnesses? Do  
20 we have any comments from the audience? Any webcast?

21                 Dana. Let's see how quickly you can go.

22          **MS. JOHNSON:** Okay. Quickly I'll tell you what.  
23 This was like a nightmare. This was an absolute nightmare.  
24 There was so many witnesses that I had no access to. What  
25 was a bothersome thing, many of the witnesses that I needed

1 to subpoena were -- didn't attend work that day. It was a --  
2 it went on and on. There were subpoenas that had to be  
3 served with the police present in a church parking lot. This  
4 was absolutely ludicrous. Running up and down the halls of  
5 an administration building trying to catch people and then  
6 there's locked doors and you can't get to the witnesses that  
7 you need to subpoena to get the material -- obtain their  
8 testimony to secure your case. It was a -- it was an  
9 absolute nightmare. It was even more of a nightmare when the  
10 issue came up in the summertime when there's, you know,  
11 people move in different locations. How can you find the  
12 speech therapist that goes from school to school to school  
13 when you don't have access to that therapist's calendar? And  
14 you don't have access to their home address. You don't --  
15 you know, there's -- it's almost virtually impossible to  
16 secure all of the witnesses that you may need for your case  
17 and the subpoena process I just found to be just a nightmare.  
18 Ludicrous.

19 **CHAIR SAVAGE:** Okay. So what -- what comments do  
20 people have?

21 My comment is that typically when I'm, you know,  
22 whether or not it's an adversarial situation which it  
23 normally is -- I -- districts usually make witnesses  
24 available for me.

25 **MS. SILVERMAN:** I was just going to say that. I --

1 this surprises me and, you know, I just want to say that it's  
2 not -- it's hard for me to comment because even when it is a  
3 situation where the parties obviously have a disagreement we  
4 make -- you know, districts make their people available. So  
5 I -- you know, I -- I don't even know how to respond to that.

6 **MS. JOHNSON:** So -- but if there's no policy then  
7 the same people that did this in my situation will then again  
8 be allowed to repeat it. Because if there's no policy  
9 there's no statute that says you have to make this available  
10 then why wouldn't they continue to do what they have done in  
11 the past?

12 **MR. CORBIN:** I want to comment to that. As  
13 Lenore -- you heard from Roberta -- you know, districts -- I  
14 never heard of a situation where a district's kept witnesses  
15 away and there is a policy and procedure -- that's called a  
16 subpoena process. I understand in your isolated situation it  
17 wasn't comfortable but I don't think this is a systemic  
18 issue.

19 **MS. MCARTHUR:** No, I don't think so.

20 **MS. JOHNSON:** More is a virtual impossibility.

21 **CHAIR SAVAGE:** I think the issue -- I think the  
22 possible issue is not with attorneys. It may be the access  
23 of parents not knowing they could say to Lenore or Eliza, can  
24 you make -- this is when I want the witnesses available.

25 Eliza.

1           **MS. MCARTHUR:** That's right. And when we -- you  
2 know, we do this routinely. I see it as an ethical duty.  
3 But I think in my practice the PHC judge frequently asks the  
4 question of both parties -- of course in all of them they're  
5 both -- that I've had experience with -- they're both  
6 represented. But the question comes up and we -- right  
7 before the judge talk about, you know, whether we will be  
8 able to make the witnesses available or will not be able to  
9 make the witnesses available, not because we don't want to  
10 but because we might not have control over certain witnesses.

11           **CHAIR SAVAGE:** Right.

12           **MS. MCARTHUR:** That gets discussed and I think that  
13 process which has been my experience should continue.

14           **CHAIR SAVAGE:** Right.

15           **MS. MCARTHUR:** Because that's an opportunity for --  
16 and particularly for an unrepresented parent to speak to the  
17 issue and the concerns and the how and the explanation that's  
18 needed for how am I going to, you know, do it. Or maybe I  
19 think that people will be hiding from me. And I have good  
20 reason to think that. And therefore where do I go next?

21           **CHAIR SAVAGE:** And I think I'm going to interject  
22 that this is a great topic to talk about jointly with the  
23 next (inaudible) meeting. There's an issue of what -- is  
24 there an etiquette or decorum in OAH. So what we're talking  
25 about is professional courtesy. Certainly I've had to

1 subpoena witnesses when districts will not make them  
2 available but that is the rare case. The norm is that  
3 districts make witnesses available -- they might not make  
4 them available when I want to. But that, I think, hits with  
5 what Eliza is talking about is --

6 **MS. JOHNSON:** The schedule.

7 **CHAIR SAVAGE:** The civility -- the professional  
8 nature that we need to bring into the system. Go ahead,  
9 Steve.

10 **MR. ROSENBAUM:** But I think it goes a little bit  
11 beyond the civility. It is for a particular situation -- I  
12 think there's -- there are circumstances where the district  
13 may be civil but then doesn't have the ability to compel that  
14 witness to attend.

15 So I think the -- the main issue is that the -- and  
16 I think it probably happens at PCH's but with unrepresented  
17 parties but we should make sure that it does -- that the  
18 judge specifically discuss, you know, do you plan to call  
19 witnesses? Do you know how you get a witness to attend? Do  
20 you anticipate problems? School district, I expect you to  
21 assist this district -- district can do it. You know, I  
22 think that happens anyway. But probably that should take  
23 kind of what Eliza's saying -- should take care of most of it  
24 but go a step further to make sure that unrepresented parent  
25 knows just how to go about doing it and the school can

1 facilitate it -- the district.

2 **MS. BROCK:** I absolutely agree with you.

3 **CHAIR SAVAGE:** (Inaudible) Southern California was  
4 that this become part of the parent manual --

5 **MR. ROSENBAUM:** And that, too.

6 **CHAIR SAVAGE:** -- if a district will not make a  
7 witness available this is how you do it. Or you should  
8 expect at your pre-hearing conference if you give the  
9 district a list of when you want staff available that absent  
10 some extenuating circumstance, they should be making their  
11 witnesses available.

12 **MS. SILVERMAN:** And I just want to comment that  
13 what I have found -- that there's some times where there's a  
14 non-public agency or non-public school that's involved and  
15 they don't want to come. And we don't have control as a  
16 school district over those individuals where a subpoena may  
17 be necessary. And I think in that case that the parent who  
18 is unrepresented should be able to get assistance from OAH in  
19 filling out a subpoena but we don't have control over that as  
20 a school district. That might be an instance but I  
21 absolutely agree that it's something that I think should be  
22 worked out at the pre-hearing conference.

23 **MS. BROCK:** Well, I think there needs to be a  
24 consistent policy regarding district employees. That it  
25 shouldn't be one parent has to go chasing down an employee in

1 the parking lot which I witnessed, versus, you know, a  
2 district in another case, you know, being cooperative or  
3 being forced to cooperate by OAH.

4 I think there needs to be a consistent agreement  
5 that districts are required to make district employees  
6 available -- that the judge agrees need to be testify at a  
7 hearing. And that if the particular witness does need to  
8 have a subpoena that the parent be given access to that  
9 teacher and not have to go running through the parking lot  
10 trying to catch them during a break.

11 So, you know, I agree that, you know, parents have  
12 a much more difficult time than an attorney who has full  
13 access to different services and -- and they shouldn't allow  
14 it in one case and then not another case.

15 **MS. JOHNSON:** And just being in the parking lot as  
16 well, you know, it's -- you have to wait for someone in a  
17 parking lot is kind of -- I don't know, it's just kind of  
18 degrading situation and -- because you can't always access  
19 the school campuses as well because you try to get a  
20 visitor's pass and no -- I was told no, you're not allowed on  
21 our campus.

22 **CHAIR SAVAGE:** Yeah.

23 **MS. JOHNSON:** So it was like, wow, how am I -- how  
24 in the heck am I supposed to serve this subpoena and I  
25 actually recall contacting Judge Laba and if I'm -- correct

1 me if I'm wrong, but I remember asking you, you know, gosh I  
2 don't know what to do. What can I do? And, of course, OAH  
3 can't give me legal advice but basically it was something I  
4 had to figure out on my own and OAH was -- you know, they  
5 could assist me into how to fill out a subpoena in which I  
6 didn't need assistance with that but actually get to the  
7 witness that was my problem. And OAH doesn't seem to --  
8 again, correct me if I'm wrong -- you don't have jurisdiction  
9 to assist me in that manner. So if there is something at the  
10 pre-hearing conference it surely didn't happen at mine.

11 **CHAIR SAVAGE:** So --

12 **MR. REZOWALLI:** Quick as a question -- does this -  
13 from the attorney's probably. Does this run afoul of any  
14 other outside codes of legal issues regarding subpoenas in  
15 general?

16 **CHAIR SAVAGE:** Pardon me?

17 **MR. REZOWALLI:** Forcing somebody to have access to  
18 somebody you want to subpoena? In terms of like corporations  
19 or other outside organizations? The whole world's around  
20 giving subpoenas is what I'm getting to --

21 **MR. CORBIN:** The school district would be required  
22 to essentially accept service for an employee.

23 **MS. BROCK:** There should be a person that can  
24 accept.

25 **MR. REZOWALLI:** In the boss's box and say give it

1 to your employee.

2 **MR. CORBIN:** I'm not aware of anything. That's all  
3 the point that we require -- that you're required the  
4 individual in their own capacity to show up for the hearing.  
5 It's not the district as a whole that's being served. So I  
6 don't know that there's a legal mechanism for that. And  
7 that's the issue also is you guys want school districts to be  
8 a policy and rule to do it in every single situation. And  
9 that's going to require a statute or --

10 **MR. REZOWALLI:** That's what find in -- is  
11 restriction.

12 **MR. CORBIN:** School district is going to have  
13 discretion. And what you're hearing from the attorneys is --  
14 who represent districts is we try to work with you. We try  
15 to do this but I don't know how you could come up with --

16 **CHAIR SAVAGE:** Right.

17 **MR. CORBIN:** -- a -- again, that would require a  
18 statute or regulation.

19 **MR. REZOWALLI:** Because occasionally I get the  
20 subpoena in a mailbox in the district office, you know --  
21 several say can you give these to your employees.

22 **MS. JOHNSON:** Oh, I was told absolutely not.  
23 That's what --

24 **MR. REZOWALLI:** Well, I'm not saying it's --

25 **MS. JOHNSON:** -- I have attempted to do and I asked

1 could I serve --

2 **MR. REZOWALLI:** I'm saying it happens.

3 **MS. JOHNSON:** -- by mail and put in care of and I  
4 was told absolutely not and said they wouldn't be considered  
5 -- they said, you know, that's your job. We're not going to  
6 do the job for you.

7 **MR. REZOWALLI:** Uh-huh.

8 **MS. JOHNSON:** That's your responsibility.

9 **MR. REZOWALLI:** I'm not saying we give them to the  
10 employees, I'm saying sometimes that's how they're served.

11 **CHAIR SAVAGE:** Right. So the question is, does the  
12 Committee recommend that as a policy, OAH state districts  
13 must make their employees available. And so that's one.

14 Two, should OAH include in their parent handbook  
15 not only a step by step process on how to fill out the form  
16 which are self-explanatory, but how to actually subpoena  
17 someone -- a witness who's difficult. So give some examples  
18 of what you might do.

19 Three --

20 **MS. MCARTHUR:** Could you repeat the first one?

21 **CHAIR SAVAGE:** Okay. Let me just get three before  
22 I forget.

23 **MS. MCARTHUR:** I'm sorry.

24 **CHAIR SAVAGE:** Three, at the PHC should the judge  
25 be directed to talk to the parties about witness and have the

1 parties reach agreement as best as possible on district  
2 employees -- who's going to be testifying, issues of that so  
3 that the issue of subpoenaing does not have to arise if  
4 possible. Eliza?

5 **MS. MCARTHUR:** I just -- I'm sorry, I needed a re-  
6 statement of one because --

7 **CHAIR SAVAGE:** Should districts be compelled to  
8 produce every witness at a hearing? Every one that a parent  
9 or their representative -- should a district as a policy be  
10 compelled to produce every one?

11 **MR. CORBIN:** Without a subpoena.

12 **CHAIR SAVAGE:** Without a subpoena.

13 **MR. REZOWALLI:** But you're talking about employees  
14 not agencies.

15 **CHAIR SAVAGE:** Employees. Not non-public agencies  
16 but just district employees if the county is being sued,  
17 county employees -- if county mental health is being sued,  
18 county mental health employees. So those are the three --

19 **MS. JOHNSON:** And there's an add-on. I'm sorry but  
20 there is.

21 **CHAIR SAVAGE:** Sure.

22 **MS. JOHNSON:** Also another concern of mine -- maybe  
23 it should just be added in the handbook -- that from my  
24 understanding if you serve someone a subpoena there is, I  
25 recall seeing -- and it also came up with some other parents

1 -- that a district employee is allowed to request their wages  
2 to be paid. And I think that's very important. Especially  
3 for somebody, again, of low income -- that's a big issue and  
4 they need to realize that if they are going to subpoena a  
5 witness that they may and then incur the cost that they  
6 cannot afford. And it think that's very important to be put  
7 out there. I do know the situation when it actually did  
8 happen. Also, a big problem for myself is when to serve the  
9 subpoena and then subpoenas -- I'd had as many as I possibly  
10 could chase down and the subpoenas were served and then there  
11 was a continuance granted and the whole dates changed all  
12 over. Then what to do? Then I have to chase them back down  
13 again to say don't come. And then to turn around and then  
14 turn around and have to serve them again. I am one person.  
15 And heaven forbid that I had to go to a job every day. When  
16 am I possibly going to do this and raise my handicapped  
17 child? Again, it's not a very level playing situation with  
18 the subpoenas. If there is a statute or something that needs  
19 to be instituted or implemented I will get whole-heartedly  
20 behind it. I just wish I knew where to begin.

21 **MS. BROCK:** Well, not only do parents not have that  
22 kind of access to compel the employee to show up but they do  
23 not even get the ability to prep those witnesses. And, you  
24 know, where as the district can prep, you know, sixteen,  
25 twenty hours for a ten-hour hearing. Parents don't have any

1 access whatsoever to these district employees and I know  
2 that's a little bit off topic but -- but, you know, at some  
3 point we need to find a way to level the playing field and  
4 make it easy for these employees to show up for hearings and  
5 available to parents in the same --

6 **CHAIR SAVAGE:** I think we're going to need to move  
7 that to January because that's a huge topic. I think that's  
8 a problem for --

9 **MS. JOHNSON:** (inaudible) to January just to add to  
10 it?

11 **CHAIR SAVAGE:** Okay. I'm going to go through the  
12 vote first and then we can do this so the three topic --

13 **MR. ROSENBAUM:** May I just --

14 **CHAIR SAVAGE:** Sure.

15 **MR. ROSENBAUM:** If there's three items that we  
16 stick to the three. We tend to move procedural --

17 **CHAIR SAVAGE:** Yeah.

18 **MR. ROSENBAUM:** -- we tend to be -- add items and -  
19 - I wouldn't have voted if I knew there was a fourth and  
20 fifth.

21 **CHAIR SAVAGE:** Got it. Okay. So the three -- what  
22 did you want to add on?

23 **MS. JOHNSON:** I just wanted to say that my other  
24 concern as well is what Tamara just brought up -- access to  
25 witnesses that, you know, the attorneys have all the access

1 to the witnesses and including my witnesses -- weren't even  
2 on their witness list but they have full access and my own  
3 witnesses were told that their jobs were being threatened and  
4 they were forbid to speak to me. They actually testified to  
5 it later in court once I finally got them subpoenaed and  
6 under oath and they did say that they were threatened. So I  
7 mean that's a huge situation as well. You know, you have  
8 intimidation and my daughter's situation there was nine  
9 people either fired or quit during this whole trial period  
10 connected somewhere to this case. So I mean that's a huge  
11 amount of people. This is -- I mean it's such a deeper  
12 layering that goes with it.

13 **CHAIR SAVAGE:** Right.

14 **MS. JOHNSON:** It needs to be addressed. So that's  
15 just --

16 **CHAIR SAVAGE:** Okay. So that -- that's something  
17 we'll need to talk later. So I think the three issues --  
18 three -- there's only three, Kent.

19 **MR. REZOWALLI:** Thank you.

20 **CHAIR SAVAGE:** One, should districts compel --  
21 should OAH compel all districts or county or whomever is the  
22 party that's being sued -- should they be compelled to  
23 produce all witnesses. The second is should -- as part of  
24 the parent manual should there be included more information.  
25 Not just how to fill out a subpoena but how to serve it and

1 what are some scenarios. And the third thing we're going to  
2 be voting on is at the PHC should the judge just begin the  
3 discussion of witnesses so that they can determine if there's  
4 going to be the need for subpoenas or not -- if districts  
5 will make staff available.

6 **MR. ROSENBAUM:** Roberta, before we vote could I  
7 suggest that one and three be merged? I think for one, for  
8 some of the reasons Carl suggested, there may be problems in  
9 compelling --

10 **CHAIR SAVAGE:** Right.

11 **MR. ROSENBAUM:** -- particularly non-school -- not  
12 just --

13 **CHAIR SAVAGE:** Okay, hold on. I'm going to stop  
14 you. You don't have to vote for number one. You can say no.  
15 And we can just all vote on that. However you want to do it.  
16 So number one, the rule being OAH will compel all districts  
17 or whoever is the main party to produce any witness that is  
18 requested that's one of their employees.

19 Okay. So there's four of us so I'm going to take a  
20 no for the one, two, three, four, five.

21 The second is, should in the parent manual there be  
22 information on how to serve the subpoena in addition to how  
23 to fill out the subpoena?

24 That's unanimous.

25 The third is should there be a discussion led by

1 the judge at the pre-hearing conference about the scheduling  
2 of witnesses to avoid the need for subpoenas? So that would  
3 be districts working with the parents to make witnesses  
4 available.

5 **MS. SILVERMAN:** And we may have to subpoena  
6 witnesses if they cannot be available.

7 **CHAIR SAVAGE:** Right.

8 **MS. BROCK:** I just have a question.

9 **CHAIR SAVAGE:** It's unanimous. Yes?

10 **MS. BROCK:** If -- would that also work on the part  
11 of the district if parent -- if they wanted a parent to  
12 testify? They'd have to --

13 **CHAIR SAVAGE:** Absolutely.

14 **MS. BROCK:** -- give a parent a subpoena --

15 **CHAIR SAVAGE:** Yes.

16 **MS. BROCK:** -- or else they wouldn't have to show  
17 up?

18 **CHAIR SAVAGE:** Yes.

19 **MS. BROCK:** Really?

20 **CHAIR SAVAGE:** Yeah. Unless you're the one  
21 present.

22 Okay, so we are -- we have five minutes left before  
23 break and let's just hit one topic. I'm going to move  
24 through the agenda. I'll bring the issue that I raised  
25 because it's a very quick one I think regarding the

1 introduction of evidence at hearing.

2 I believe based on my experience both at SEHO and  
3 OAH the hearings are longer now because I have to go through  
4 and introduce each piece of evidence I'm going to do --  
5 please identify it. I have to take the steps to introduce  
6 it. Please introduce it.

7 I think it adds too much into the hearing and I  
8 recommend that we go back to the old days. We have a stack  
9 of evidence that we've put together. We present it as a  
10 whole. If there are objections to it those objections be  
11 raised as they're being discussed or what I recall occurring  
12 was at the beginning of the hearing the judge would say, what  
13 are your objections to the evidence. To me that's more  
14 streamlined. I just think it's too long with what's  
15 currently going on.

16 **MR. CORBIN:** To address that I think it is  
17 appropriate. I do like the process. It should be formal.  
18 Each exhibit should be introduced and a foundation developed.  
19 The issue with just handing -- I've seen literally a box of  
20 documents at a SEHO hearing -- that unnecessarily clutters  
21 the --

22 **MS. BARDET:** The record?

23 **MR. CORBIN:** -- the issue, the case. All that  
24 evidence is in there. It just doesn't make sense to me if in  
25 fact these are the only documents that are going to be used

1 at a hearing. These others were not used then why have those  
2 cluttering the record? That's my opinion.

3 **MS. SILVERMAN:** I agree with that. I think that  
4 otherwise we could be left with just reams and reams of  
5 documents that are not pertinent to the issues and I think it  
6 works really well when we introduce the evidence that we  
7 really want considered when it comes time to make a decision  
8 and all those other documents which could go back three  
9 years, could be historical in nature, are really not relevant  
10 to the issues.

11 **CHAIR SAVAGE:** Eliza?

12 **MS. MCARTHUR:** And my concern -- and I strongly  
13 oppose your recommendation, Roberta, and my biggest concern  
14 is that the hearing officer may end up considering something  
15 that my witnesses have not spoken to and I don't -- I mean  
16 it's just -- this is so outside of basic fundamental  
17 litigation practice that --

18 **CHAIR SAVAGE:** Steve?

19 **MR. ROSENBAUM:** I endorse it. The -- I think that  
20 it's used in other administrative processes. In Social  
21 Security and probably, I think, Unemployment and so forth. I  
22 think there's a way to take care of what Eliza and Lenore and  
23 Carl are talking about through the -- after the -- before the  
24 hearing is closed one could go through and review the  
25 evidence that's actually been -- I realize not all the

1 evidence is necessarily testified to but one could look in  
2 terms of documentary evidence that has not otherwise been --  
3 that the judge could actually raise (inaudible). I'm going  
4 to ask whether or not you want to withdraw these exhibits.  
5 You had that kind of administrative discussion but I like the  
6 idea of having it admitted at the outset, certainly for ease  
7 of unrepresented parents as well. I realize it takes special  
8 precautions there but it would make it more uniform kind of  
9 procedures. I think we can deal with those other objections  
10 but the initial introduction and admission should happen at  
11 the outset.

12 **CHAIR SAVAGE:** Okay. Dana?

13 **MS. JOHNSON:** Yeah. My concern -- I mean I'm for  
14 it -- I endorse this. But for whatever reason if it is  
15 opposed -- that having quadruple W in the letters -- I mean  
16 granted we'll get to that letter later but, you know, getting  
17 to quadruple W and to lay foundation -- first of all, it  
18 definitely is again something that really needs to be a whole  
19 chapter actually in the parent handbook because to lay a  
20 foundation and I didn't realize -- I had no knowledge of the  
21 fact that if I didn't introduce -- I was under the assumption  
22 -- that funny word assume -- I assumed that the binders I  
23 made that I had, you know, previously had to distribute to  
24 opposing counsel -- that it was just in. So as an  
25 unrepresented parent I had no idea that I just assumed all of

1 those documents would be in review.

2           So there just needs to be some publication put out  
3 there concerning this issue as well, whether it's endorsed or  
4 opposed. I mean, granted, I think for me, I would have had -  
5 - I mean I can't even tell -- I guess if I did quadruple  
6 there would be 200 pieces of evidence then it's also going to  
7 raise the cost up and it seems to be a big issue is cost.  
8 But if I need to lay foundation and introduce 200 pieces of  
9 evidence to make sure that it's not going to be ignored, that  
10 it's not going to be an oversight, then I needed a two to  
11 three week trial.

12           **CHAIR SAVAGE:** Okay. Eliza and then Susan.

13           **MS. BROCK:** Why did they change from when SEHO  
14 initially -- I mean SEHO evidently allowed all evidence to be  
15 done and why did OAH change that policy and not let anyone --

16           **CHAIR SAVAGE:** Okay, well we can find that out.

17           Eliza?

18           **MS. MCARTHUR:** You know, my sense is that when both  
19 parties are unrepresented their laying a foundation is  
20 whatever it is that they want to do for that purpose and it  
21 just happens. If the district is represented by counsel and  
22 the parent isn't and the district objects on foundational  
23 grounds, my sense is that any judge with -- you know, half  
24 awake -- is going to deal with it very quickly, maybe to  
25 respond to ask a few foundational questions and move on.

1           **CHAIR SAVAGE:** Right.

2           **MS. MCARTHUR:** So I think those foundational  
3 issues are not -- at least for me they're not as much of an  
4 issue as the consideration -- what is it that the judge is  
5 doing with something that may not even have come in through  
6 any particular witness that may or may not -- I've had a  
7 piece of evidence of which the authenticity was extremely  
8 questionable. You know, and I suppose that Stephen's idea  
9 could address that concern but I am, you know, concerned that  
10 we just run into more arguments about it. We may have to  
11 then bring in witnesses --

12           **CHAIR SAVAGE:** Right.

13           **MS. MCARTHUR:** -- to deal with some piece of  
14 evidence. I mean it's a much more backwards approach in my  
15 mind.

16           **CHAIR SAVAGE:** Okay. So I'm going to let you make  
17 a quick comment, then we're going to vote and then it's lunch  
18 and there's one comment from the webcast.

19           **MS. BARDET:** Well, I think that if -- I strongly  
20 agree with the recommendation. I think that having to  
21 authenticate every document that's going in is very time-  
22 consuming. It's very expensive. It causes the hearings to  
23 be much longer. And certainly if there's an objection then  
24 you bring a witness in and actually deal with it. But right  
25 now parents -- it's usually falling on the parents -- parents

1 are required to authenticate every document and it -- it's a  
2 huge burden. Let's just deal with the problems. If there's  
3 an objection we deal with it.

4 **CHAIR SAVAGE:** Okay. So --

5 **MR. ROSENBAUM:** One more?

6 **CHAIR SAVAGE:** If you can do it in ten seconds or  
7 less.

8 **MR. ROSENBAUM:** Did I understand from what Susan's  
9 saying -- what you're saying -- so you would preserve the  
10 objection at the time, for instance. That document would be  
11 later introduced in the hearing or referenced in argument,  
12 for instance. Could there be that avail -- will there be the  
13 opportunity to object?

14 **CHAIR SAVAGE:** By the district?

15 **MR. ROSENBAUM:** By the district, let's say.

16 **CHAIR SAVAGE:** Yeah. I think what I'm saying is --

17 **MR. ROSENBAUM:** Presumption is that I'll be in.

18 **CHAIR SAVAGE:** It is all in and if you want to  
19 object to it --

20 **MR. ROSENBAUM:** Okay.

21 **CHAIR SAVAGE:** -- you're going to --

22 **MR. ROSENBAUM:** Okay.

23 **CHAIR SAVAGE:** -- object to it so you're going  
24 through the evidence and you're saying these seven documents  
25 should be out.

1           **MR. ROSENBAUM:** Okay. I think that's one of the  
2 safeguards. Another would be to require meet and confer with  
3 the document exchange so the parties come up with the  
4 documents they actually intend to introduce and to make part  
5 of the record. So that would also help to kind of streamline  
6 documents.

7           **CHAIR SAVAGE:** Okay. So the issue is my  
8 recommendation that OAH admit all the documents and parties  
9 can object to it. Anyone in favor? So there's four, five.  
10 And so one -- I guess -- I'm assuming the other four are  
11 saying no. Okay.

12           Steve put in some conditions where the parties meet  
13 and confer about the evidence. We might not reach a solution  
14 on all of that but there would be other ways of objecting or  
15 trying to reach a clear record. Parties in favor of that? I  
16 mean I think that's not a bad idea.

17           **MS. BROCK:** A meet and confer session about  
18 evidence? I have no problem with that.

19           **CHAIR SAVAGE:** Okay. So there's two --

20           **MS. BARDET:** Could we specify maybe before the  
21 hearing -- how much --

22           **CHAIR SAVAGE:** You could do it by phone.

23           **MS. BARDET:** -- to a pre-hearing conference --

24           **CHAIR SAVAGE:** Let's take your idea and talk about  
25 it in January.

1           **MR. ROSENBAUM:** Okay. That's fine. Or after  
2 lunch.

3           **CHAIR SAVAGE:** Yeah. We could do it after lunch.

4           **MS. MCARTHUR:** Then let us not make a  
5 recommendation for OAH to act on prior to that.

6           **CHAIR SAVAGE:** Okay. So we'll wait. We'll hold  
7 this whole issue for us until January.

8           **MS. MCARTHUR:** Because that's kind of --

9           **CHAIR SAVAGE:** The last thing I want to say is  
10 there was a comment on the witness issue from the web and  
11 this will be the last thing. "This is why it's unfair that  
12 the burden of proof is on parents in these cases. School  
13 districts are able to use a limitless amount of taxpayer  
14 money for witnesses, subpoenas, prepping and parents can  
15 never compete on an even level with that."

16                   With that, we are going to break for lunch and be  
17 back at one.

18           **JUDGE LABA:** Returning at one o'clock to the  
19 webcast for those of you viewing out there will be dark until  
20 one o'clock when we return from lunch. Thank you for your  
21 time.

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

23           **JUDGE LABA:** (Inaudible). Please, there are lots  
24 of copies out there so take as many as you like.

25                   Any questions about that process?

1           **MR. REZOWALLI:** Can you mention how to get it from  
2 the website?

3           **JUDGE LABA:** Sure. I believe it's on the front page  
4 of the website and just go to the Special Education tab to  
5 right there along with the instructions saying feedback back  
6 to us on the Parents Manual. It's going to be -- we'll have  
7 three meetings, too. January and April. Two more meetings  
8 before this Parent Handbook needs to be finalized and  
9 published and put in a final format. So we do want to move  
10 through it as quickly as possible.

11           **MS. JOHNSON:** And remove the one thing it said the  
12 nuts and bolts of mediation. Is this an automotive thing?  
13 That really threw me off.

14           **JUDGE LABA:** Every comment is important and to be  
15 considered, okay? And I would love somebody to put it  
16 through what I call the mom test. I used to whenever I would  
17 write something for school I'd give it to my mother and if  
18 she could understand it I was good to go. So I know Dana  
19 mentioned her 13-year old son is reading it. It's like that's  
20 good. We want to make sure that everybody can understand  
21 what's in there. And we want it to be simple enough to  
22 follow instructions, okay? Any other questions about the  
23 Parent Handbook? Yes.

24           **UNKNOWN FEMALE FROM AUDIENCE:** Is it going to be  
25 translated in all the major languages?

1           **JUDGE LABA:** Okay. So the question was will it be  
2 translated in all the major languages of the parents. Under  
3 our contract with CDE anything that we publish needs to be  
4 translated into five common languages spoken in California  
5 schools and you're going to attack me if you ask me what  
6 those are.

7           **MR. ROSENBAUM:** I was going to ask you what those  
8 are.

9           **JUDGE LABA:** Spanish, Tagalog, Vietnamese, Hmong,  
10 and Chinese.

11          **MR. ROSENBAUM:** Hmong?

12          **MS. BARDET:** Hmong doesn't have a written vowel.

13          **JUDGE LABA:** What was that?

14          **MS. BARDET:** I don't think Hmong has a written  
15 language.

16          **MR. ROSENBAUM:** Well, there is one --

17          **JUDGE LABA:** But those are the five --

18          **MR. ROSENBAUM:** -- but I'm surprised Hmong but that  
19 -- that's a project in itself.

20          **CHAIR SAVAGE:** Yes.

21          **JUDGE LABA:** CDE gives us the languages that they  
22 get from some -- that tells us what the common languages are.  
23 And they can change from year to year. But definitely once  
24 we have it translated -- let's say next year a different  
25 language -- let's say Russian comes in. We would still have

1 the old copy available. So it would be -- we would have an  
2 extra language. Yes, it will be translated.

3 **CHAIR SAVAGE:** And I think the other issue that's  
4 come up in this meeting and was, I think, part of an issue  
5 is, is this going to be available just to parents or I think  
6 it's been alluded to it's going to be potentially  
7 available --

8 **JUDGE LABA:** It's available to anybody. It will be  
9 on our website. Anybody who wants to access it can access  
10 it.

11 **MR. REZOWALLI:** Actually I sent a notice to all the  
12 SELPA directors in the state to pass on the link from the  
13 website so that they have that recently.

14 **JUDGE LABA:** And it is framed -- addressed to the  
15 parent.

16 **MR. REZOWALLI:** Yeah.

17 **JUDGE LABA:** But we can change the tone of that if  
18 that's what everybody feels is necessary to stage --

19 **MR. REZOWALLI:** My email indicated it would be good  
20 for directors as well.

21 **CHAIR SAVAGE:** Absolutely.

22 **JUDGE LABA:** Yeah. Or a party -- or, you know, if  
23 you're a party to a matter or something like that but the  
24 goal of our contract with CDE is to make sure that we make  
25 this system as accessible to parents as possible. In an

1 effort to get the word out and make it accessible to people  
2 who don't want to have representation so that's why it was  
3 framed in terms of that. It follows our contract.

4 **CHAIR SAVAGE:** Okay.

5 **MS. JOHNSON:** So it will go out with -- like with  
6 the first contact maybe from a parent?

7 **JUDGE LABA:** That hasn't been decided yet. I would  
8 love for you to put that on the agenda for next time --

9 **MS. JOHNSON:** Okay.

10 **JUDGE LABA:** -- and address when -- whether we do  
11 mail it. I mean, if it's a big thick manual, do we mail it  
12 to everybody? Do we do like Protection Advocacy did and make  
13 it available if someone calls us and asks for a copy? I  
14 don't know the answer to that but it's certainly worth  
15 discussion with the Committee.

16 **MS. JOHNSON:** Again, I think it will coincide with  
17 the pamphlet that has the number -- you know, there's a  
18 parent handbook and it even said that in the pamphlet --  
19 crossover.

20 **JUDGE LABA:** Okay.

21 **CHAIR SAVAGE:** So then the next issue Judge Laba's  
22 going to talk about is there's been a repeat issue about what  
23 is the scope of the training that the current ALJ's have and  
24 then some proposed recommendations for additional training.

25 **MR. ROSENBAUM:** Roberta, for -- will we be able to

1 make some recommendations on the handbook then? You want to  
2 wait?

3 **CHAIR SAVAGE:** We're not going to make them today.

4 **MR. ROSENBAUM:** Oh.

5 **CHAIR SAVAGE:** So -- because I think unless you had  
6 a chance to go through --

7 **MR. ROSENBAUM:** Oh, no, just -- not the -- just on  
8 this notion of -- because it was -- just what Judge Laba said  
9 responds to Eliza's point. I think it still should remain  
10 Parent Manual in terms of its tone and language but obviously  
11 others can read it. I just think it's important that that be  
12 oriented that way.

13 **CHAIR SAVAGE:** Okay.

14 **MR. ROSENBAUM:** And I would suggest that that be in  
15 place. Then maybe that's something you want to reserve.

16 **CHAIR SAVAGE:** I think I would reserve any  
17 discussion of the Parent Handbook until January --

18 **MR. ROSENBAUM:** Okay.

19 **CHAIR SAVAGE:** -- when we have a chance to review  
20 it and give a whole feedback on it.

21 **MR. REZOWALLI:** We're not worried that if we meet  
22 in January it's beyond the December 1<sup>st</sup> deadline for comments.

23 **JUDGE LABA:** Yes, it's after.

24 **CHAIR SAVAGE:** So you'll have the comments --

25 **JUDGE LABA:** Right.

1           **CHAIR SAVAGE:** and then make any kind of --  
2 incorporate any kind of changes by them.

3           **JUDGE LABA:** That's the goal is that we get  
4 everything by December, make adjustments to the manual from  
5 everyone's comments and issue a new version for you

6           **CHAIR SAVAGE:** Okay.

7           **JUDGE LABA:** -- for January. But certainly  
8 discussions that are generalized such as, what do you call it  
9 versus who is it directed to, etc., are things that won't  
10 affect our draft because that's an easy thing to change.

11           **CHAIR SAVAGE:** Is that okay, Steve?

12           **MR. ROSENBAUM:** Oh, sure.

13           **CHAIR SAVAGE:** Okay. So the training.

14           **JUDGE LABA:** Okay, training. And again, this issue  
15 has been raised a lot but what I wanted to just give you --  
16 and we have several recommendations that have already been  
17 made about training -- is the question comes up regularly.  
18 What kind of training do we get? Under our contract with the  
19 Department of Education before a judge can hold an initial  
20 hearing they have to have completed 80 hours of training in  
21 special education and in general how to be a judge. Okay?  
22 Now this is under the new contract. Previously there were  
23 different requirements. So everybody that was already hired  
24 by OAH has completed the initial training that was required  
25 under our previous contract and is what we call certified to

1 do hearings. Okay? So under the current contract any new  
2 hire that we have with complete the initial -- an initial 80  
3 hour training program. After that they are required to have  
4 20 hours of Continuing Education in a variety of areas over  
5 the fiscal year. Okay?

6 In mediation any judge that's a new hire -- initial  
7 hire needs to go through 40 hours of training, 20 of which is  
8 in special education and 20 of which is in mediation  
9 techniques. Our judges all actually get a full I think it's  
10 42 hour program in mediation techniques. Most of them go to  
11 Pepperdine University for the Straus Institute for Dispute  
12 Resolution. So it's a much longer program. But all the  
13 judges in our (inaudible) already completed all the initial  
14 training so under the new contract if we hire anybody new  
15 they'll have to go through that program there. They also --  
16 everyone must complete 20 hours of continuing education in  
17 mediating special education disputes as well.

18 Our contract is online. It's on the Advisory page  
19 and you can see the areas where CDE has identified -- it's  
20 not limited. It shall include but not be limited to certain  
21 topics such as pedagogical interests, the interests of the  
22 parents and teachers and everyone involved in due process,  
23 things like that. So to address those training requirements  
24 I want to let you know what types of training we do offer.  
25 We have monthly trainings which last about an hour and a half

1 per month and they're done through all ALJ's throughout the  
2 State who are available. Sometimes some are in a hearing so  
3 they can't come to that. Then there'll be a video conference  
4 so all the offices are getting the same training at the same  
5 time. And there are a variety of topics.

6           Last month we had a panel come and talk about  
7 Special Education in terms of schools. So any suggestions  
8 you can give us on topics that would be -- that we could do  
9 in a short time frame like an hour and a half. People that  
10 you might suggest that we can have come do that presentation  
11 would be very helpful. We do attend regular training  
12 conferences as well. The National Judicial College offers  
13 classes on a regular basis which are aimed at judges.  
14 They're not specific to Special Education but they are aimed  
15 at judges. And currently we have judges attending a course  
16 on Ethics and Bias. We had a couple judges from our  
17 (inaudible) section -- Special Ed. didn't go but last week  
18 they were at How to Deal with Pro Per Parties. The National  
19 Judicial College offers things regularly that we try and  
20 access as much as some of them will allow us to do that.  
21 They are out of state. They are in Reno which for us in  
22 Northern California is just really not out of state but  
23 technically they are. So it can be a little bit difficult to  
24 access them from time to time. We do attend the -- we have  
25 an annual training in November and one in -- we go to the

1 National Conference in March. This year the National  
2 Conference for Special Ed. Judges and Mediators is being held  
3 at UCLA and we will be attending that. We are in November  
4 the Seattle School of Law is bring their -- what they call  
5 their IDEA College which I know Stephen has been involved in.  
6 They're bringing that to Sacramento so that all of the judges  
7 can attend. Again that out of state issue -- we ask them  
8 just come here. And they're bringing their whole program  
9 here. I know we have a couple of -- I think she's left -- we  
10 had an audience member who is going to be one of the  
11 presenters there as well. Again, these are conferences that  
12 are put on by other people so we don't have control of the  
13 topics that are presented but they are aimed specifically at  
14 Special Education. Both of those conferences are.

15           So that is the typical kind of continuing education  
16 that we provide. But what we do look for and we do take it  
17 very seriously -- I know at the last Advisory Meeting  
18 somebody recommended we watch the Fat City video on learning  
19 disabilities. We immediately got it. Every judge has seen  
20 it. So those recommendations are the kind of things I hope  
21 you can give us is, you know, I saw this person speaking.  
22 Can you get them? We would like those recommendations  
23 because we do want to address topics that everyone thinks are  
24 very important. And so if you have recommendations today  
25 that would be great. Or even in the future where something

1 comes up -- a simple email to myself would be great. I'll  
2 check into it right away to see if we can get them. Any  
3 questions?

4 **MR. CORBIN:** Yeah, quick question. The OAH  
5 contract -- is that on the CDE website or the OAH?

6 **JUDGE LABA:** It's on our website on the Advisory  
7 page. I think there's a paragraph that says something about  
8 the role of the Advisory Committee and for an entire  
9 explanation click here.

10 **MR. CORBIN:** Okay.

11 **JUDGE LABA:** And that will give you our entire what  
12 we call our scope of work. It outlines everything we're  
13 required to do for Department of Education.

14 **MR. CORBIN:** Thank you.

15 **JUDGE LABA:** For this contract.

16 **MS. BROCK:** Do your ALJ's take any kind of test to  
17 see if they have grasped the material that they have been  
18 shown or --

19 **JUDGE LABA:** Well, it's not really a test. We do a  
20 lot of -- in part of our initial training program we do a lot  
21 of mock hearings and things like that in the initial part of  
22 it so that we can see whether they're able to apply those  
23 skills in a made up situation before they go out and apply  
24 those skills in the actual situation. So we use a variety of  
25 different tools like that to measure whether they're ready to

1 go out and do the actual hearing.

2 **MS. BROCK:** Well, you know, in order to get a law  
3 license you have to take a very lengthy --

4 **JUDGE LABA:** Right.

5 **MS. BROCK:** -- test. I would like to see that  
6 ALJ's have -- you know, take a written test to ensure that  
7 they understand Special Education law because I see a lot of  
8 very simple mistakes, you know, in rulings and I -- you know,  
9 I don't get the impression that watching a video for 9.5  
10 hours is sufficient for an ALJ to then take on a case. I'd  
11 like to know that they actually understand Special Education  
12 law and grasp the information. I would just like to see a  
13 written test.

14 **JUDGE LABA:** It's something the Committee can  
15 consider.

16 **CHAIR SAVAGE:** What does the Committee think of  
17 that?

18 **MS. MCARTHUR:** No.

19 **MS. BROCK:** I would also like to see -- you know,  
20 you say 80 hours of -- you know, of training? You know, it's  
21 very eclectic -- the kind of training -- if anyone has ever  
22 pulled an ALJ's training you can see that one may have, you  
23 know, training in one area where another may have  
24 insufficient training for your particular type of case and I  
25 would like to see a more standardized rather than 80 hours

1 of, you know, video watching or whatever you want to do --  
2 you know, be much more formalized, standardized training so  
3 that there is consistency in their knowledge.

4 **CHAIR SAVAGE:** Eliza, you have something to say?

5 **MS. MCARTHUR:** I did. My vote was no.

6 **CHAIR SAVAGE:** Okay, do you want to expand on that  
7 or you just want to say no?

8 **MS. MCARTHUR:** I think it's inappropriate --

9 **MR. CORBIN:** You're at a loss for words.

10 **MS. MCARTHUR:** -- yeah. At a loss for words. I  
11 think it's inappropriate in that, you know, when we talk  
12 about judges' mistakes -- and this is whether it's OAH or  
13 State or Federal judges at whatever level -- I think more  
14 frequently they're not -- we're talking about a disagreement  
15 in application of a particular statute. I know of no test  
16 that judges outside of this forum are required to take to  
17 ensure that every case they hear on every topic they have an  
18 excellent grasp of the law. That's what the briefing is for.  
19 That's what part of the education and argumentation that we  
20 do as part of litigation -- whether or not represented is  
21 about.

22 **MS. BROCK:** But that's how they give you your  
23 license.

24 **MS. MCARTHUR:** They have a license.

25 **MS. BROCK:** You know, they make you take a test.

1           **CHAIR SAVAGE:** Okay, hold on. So there -- it's  
2 good that this came up. There was a question from the web.  
3 "Is it true that ALJ's do not have law degrees?" and then the  
4 statement is "parents think judges are judges." And I think,  
5 yes, they have to have law degrees. They are not judges like  
6 you would say a Federal court judge or State court judge.  
7 They are Administrative Law Judges and I'm too far out of law  
8 school -- though not that far -- to know the difference or to  
9 be able to articulate it today. So they are Administrative  
10 Law Judges for parents who don't know that. They are not the  
11 type of elected official or appointed judge that you would  
12 hear about when you read in the newspaper Federal Court Judge  
13 Garland Burrell or Marilyn Patel says this. They have been  
14 appointed. Or a Superior Court Judge who was elected. So --  
15 but I think it doesn't, you know, coming back to the  
16 discussion of what are the judges trained in -- is it  
17 sufficient? Should there be a test? I don't know.

18           **MR. ROSENBAUM:** Could I just respond --

19           **CHAIR SAVAGE:** Yes.

20           **MR. ROSENBAUM:** Yeah, a couple of -- first of all I  
21 think -- I don't think all the training is by video. Right?  
22 This is just a portion of it --

23           **JUDGE LABA:** No.

24           **MR. ROSENBAUM:** It's these in-service -- brief in-  
25 services. But a lot of it is the National Judicial College,

1 other in place training. Plus don't forget, Tammi, that it  
2 begins with -- I mean, every ALJ has a law degree and a  
3 certain number of years of practice in other kinds of --  
4 there's a whole selection process that one goes through. So  
5 not all of testing of any particular profession is done by  
6 way of an exam. So I --

7 **CHAIR SAVAGE:** Yeah. And I'm not going to disagree  
8 with you, Tammy, that I think there are some decisions out  
9 there that are misapplying the law and I -- I wonder where  
10 they got their training.

11 **MS. BROCK:** Uh-huh. Yeah.

12 **CHAIR SAVAGE:** And I think -- you know, and  
13 unfortunately -- I mean I think our remedy is an appeal. I  
14 think some of those should -- we shouldn't have to appeal  
15 because it's so glaringly not applying any law that I'm aware  
16 of. Whether I know it all or not.

17 **MS. BROCK:** But it would be nice if they had a --  
18 you know, even if the CDE had a specific person set up that  
19 an ALJ could talk to if they had a -- you know, I mean --

20 **MS. SILVERMAN:** That's just not -- and I know that  
21 that's one of the downfalls --

22 **MS. BROCK:** Especially in (inaudible).

23 **MS. SILVERMAN:** -- or the pitfalls of litigating  
24 and of going to a hearing and having worked for the courts in  
25 both California and New York, you know, most -- there's no

1 litigant that's going to go into a trial and be necessarily  
2 satisfied with the outcome. That's -- or say that the judge  
3 didn't misapply the law or didn't know the law. You know, I  
4 think that's just part of the litigation process and  
5 sometimes we're pleased with the outcome and sometimes we're  
6 not. Or have varying degrees of opinions regarding the judge  
7 that we happened to get.

8 I think that's what Roberta said -- we do have the  
9 right of appeal. Yeah, I think we would all like to see  
10 judges know everything about our subject. That doesn't  
11 happen outside of this arena.

12 **MS. BROCK:** I think I'm more concerned about brand  
13 new ALJ's rather than the ones that have been in a lot of  
14 cases and they know, you know, kind of the way the system  
15 works. But you get someone who is a brand new ALJ --

16 **MS. SILVERMAN:** Well, that's a big risk.

17 **MS. BROCK:** You know, how -- you know, we're  
18 talking about a child's life. And you know how like they --  
19 you know, the process is so -- you know, is there a system  
20 set up where -- and I think, you know, going back to the  
21 training -- if you looked at everyone's 80 hours you would  
22 see that it's very different from ALJ to ALJ. So --

23 **CHAIR SAVAGE:** Well, and I think the other part of  
24 it that becomes problematic for parents and districts jointly  
25 is when we go on appeal there's a level of deference given to

1 that decision because they assume that the Administrative Law  
2 Judge has specialized training.

3 **MS. BROCK:** Right.

4 **CHAIR SAVAGE:** And when it seems like they're not  
5 how do we then -- it becomes more expensive and costly  
6 litigation to prove you've got a judge who doesn't have that  
7 specialized training. Before I move on, there was a comment  
8 from the web. "It isn't surprising that the district lawyers  
9 present do not want an ALJ's who are well-trained in the law.  
10 They take advantage of it."

11 **MS. SILVERMAN:** Well, that's just not true.

12 **CHAIR SAVAGE:** It's not my comment. I should have  
13 let you read it.

14 **MS. SILVERMAN:** No, that's all right.

15 **CHAIR SAVAGE:** Dana?

16 **MS. JOHNSON:** When you were talking about  
17 specialized training for the ALJ's, I was just wondering, do  
18 they -- is there any requirement at all for them to attend an  
19 IEP? Do they do mock IEP's? Just because I think IEP's are  
20 such a huge issue of, you know, the core -- or usually. So  
21 if we -- just curious if -- I'd love for an ALJ to come to my  
22 IEP. That would --

23 **JUDGE LABA:** I just want to say. It is something  
24 that we have been trying to arrange for a really long time.  
25 But because of the confidentiality of the --

1           **MS. JOHNSON:** I'll fake one for you.

2           **JUDGE LABA:** We even suggested to Seattle when they  
3 were coming, could you do a mock IEP for us? But the  
4 logistics of getting everyone to do something like that was  
5 really hard.

6           **MS. JOHNSON:** I'm in.

7           **JUDGE LABA:** I'd really like to set one up and if I  
8 can get people to volunteer to hold one --

9           **MS. SILVERMAN:** We could do one between the --

10          **MS. JOHNSON:** We have one coming up --

11          **JUDGE LABA:** That would be -- that would be --  
12 again --

13          **MS. JOHNSON:** My daughters exited Special Ed. so we  
14 are perfect candidates.

15          **JUDGE LABA:** Whenever we do a mock hearing -- like  
16 when we do mock hearings or mock (inaudible) we try and throw  
17 in all kinds of bizarre things that could happen to you in  
18 the middle of a hearing or in the middle of something. So it  
19 would be a good opportunity for them to -- but how do you --  
20 how do you fake a real -- the real emotions that are involved  
21 in something like that? That's the hard part.

22          **CHAIR SAVAGE:** Right.

23          **MS. JOHNSON:** But I'm in. I -- yeah, you bet. You  
24 give me an Emmy at the end and we'll call it a day.

25          **JUDGE LABA:** I'd like to take advantage of anybody

1 who wants to say they'll volunteer to do one at one of our  
2 trainings. Absolutely.

3 **MS. JOHNSON:** I'm so in.

4 **JUDGE LABA:** So we can see how the process goes,  
5 you know? What do you talk about first? What do you talk  
6 about next? Yeah.

7 **MS. MCARTHUR:** And I think -- and I think more  
8 importantly than the emotions, it's the substance of what  
9 goes on in the IEP's and the analysis of the child's unique  
10 needs and how that's tied to the goals and objectives and the  
11 kind of educationally based information that's -- that gets  
12 exchanged among parents and educators and parents' experts  
13 that I think is relevant to the type of training perhaps that  
14 we're talking about. So that these are not -- you know,  
15 unless you're in Special Ed., you don't really -- or long  
16 enough in it or a parent of a child with special needs -- you  
17 don't really have a handle on the meaning of some of those  
18 substantive things that are going on. I think we can all  
19 agree that some meetings are emotional and some people  
20 contain themselves.

21 **CHAIR SAVAGE:** Right.

22 **MS. MCARTHUR:** That's just true of any situation  
23 where conflict is involved. But there is a lot to be learned  
24 substantively from the IEP process.

25 **CHAIR SAVAGE:** Right. So do we have a -- do we

1 have a cohesive recommendation that we want to consider,  
2 Tammi?

3 **MS. BROCK:** Well --

4 **CHAIR SAVAGE:** Right. At this point --

5 **MS. MCARTHUR:** This is the type of training.

6 **MR. ROSENBAUM:** Oh.

7 **CHAIR SAVAGE:** Do we have some recommendations? Do  
8 we want to make some preliminary -- have something deferred?

9 **MS. BROCK:** I would like OAH to disclose everyone's  
10 training and then maybe we would be able to look at -- you  
11 know, is there a problem with training? You know,  
12 specifically I asked for our ALJ's training and you know, a  
13 month later I got one thing and then they updated it to  
14 something else and my concern is that OAH didn't even know  
15 whether or not this person was properly trained because they  
16 didn't have a piece of paper that had all of the person's  
17 training on it.

18 So I would like to see, you know, on the website  
19 not only everyone's biography up there but everyone's  
20 training and then, you know, someone evaluate whether they  
21 have sufficient training. Is it -- is the 80 hours mostly in  
22 how to be an ALJ versus Special Education? I think it really  
23 needs to be fine tuned as to how much Special Ed. training  
24 and in what specific, you know, areas or is there a specific  
25 video that everybody should watch or a specific program that

1 they need to go through?

2 **CHAIR SAVAGE:** I'm going to cut you off because I  
3 think we've --

4 **MS. BROCK:** Okay.

5 **CHAIR SAVAGE:** -- got the gist of it. Is there  
6 another possible recommendation? Other than just looking at  
7 the topics as potential training topics and then including  
8 Eliza's IEP topic? Steve?

9 **MR. ROSENBAUM:** Just narrowly on this IEP, I think  
10 simulations are difficult to really, you know, get a good  
11 sense of the reality. I would just encourage those of us  
12 involved in IEP's to get waivers from clients to actually  
13 attending having ALJ's attend IEP's in their area and -- you  
14 know, and then with the obviously the understanding that any  
15 case that would emanate from that would not be heard by that  
16 ALJ. But I think that's being more realistic.

17 **CHAIR SAVAGE:** That's good. Okay. Okay. So we  
18 have --

19 **MS. SILVERMAN:** Well, there was one thing. If I  
20 could just add to that. You know, it -- the process changed  
21 and maybe even Marion could speak to this but I know that  
22 there was a point when SEHO was involved where there were  
23 times when the mediator -- we would maybe schedule a  
24 mediation after an IEP and sometimes where the mediator would  
25 even attend --

1           **CHAIR SAVAGE:** Yes.

2           **MS. SILVERMAN:** -- the IEP when we were really  
3 trying to resolve an issue. And I know that some of our --  
4 well, our ALJ's also serve as mediators and that might be a  
5 tool -- and I'm not -- it might be too cumbersome but just  
6 from time to time that we're able to utilize. And that would  
7 maybe help inform --

8           **MR. ROSENBAUM:** Uh-huh.

9           **MS. SILVERMAN:** -- the mediator who would then take  
10 that experience into a different form when they act as a  
11 judge to understand some of the dynamics in the process.

12           **CHAIR SAVAGE:** Okay.

13           **MR. ROSENBAUM:** Can I make one more --

14           **CHAIR SAVAGE:** Wait. Okay. Go ahead.

15           **MR. ROSENBAUM:** And -- because I see David and  
16 Carol there with their special solutions panel in San  
17 Francisco --

18           **CHAIR SAVAGE:** Right.

19           **MR. ROSENBAUM:** -- which is a local form of ADR  
20 would also be another forum where the parties are willing to  
21 have judges with their mediator caps or the judge's caps on  
22 sitting in on that, too. And certainly other districts do  
23 that.

24           **UNKNOWN FEMALE FROM AUDIENCE:** Okay. I am a parent  
25 and speaking as a parent I agree with Mr. Brock over there

1 about judges need to take some type of exam. Because we --  
2 when we walk into a due process hearing we assume the judge  
3 knows the law -- Special Education laws. And when they don't  
4 we are just -- don't really have -- have a very disadvantage  
5 because number one, as parents we have limited resources to  
6 go to court. And talking about appeal, that's very, very  
7 expensive to appeal a due process hearing to the District  
8 Court. And, you know, school district has all the manpower  
9 and all the resources, not parents. Parents only, you know,  
10 we spend our money on our kid who is disabled. And that is  
11 where our money goes every month actually. And we have very  
12 little money to hire attorney or whatever to help us to go to  
13 court and when we go to this due process we expect the judge  
14 to be knowledgeable and knowing what Special Education law is  
15 all about. And then maybe they render a fair decision in  
16 this type of hearings.

17 **CHAIR SAVAGE:** Okay. So we have three  
18 recommendations on the floor. One is that -- oh, okay.

19 "Ever since OAH took over due process" -- this is  
20 from a webcast - the webcast -- "Ever since OAH took over due  
21 process hearings from McGeorge, something like 95 percent of  
22 the cases are ruled in favor of school districts and not  
23 parents. When McGeorge did this it was even, about 50-50.  
24 How do you explain the obvious unfairness if not lack of  
25 training of the ALJ's?"

1           **MR. CORBIN:** I will address that for you if I can.  
2 I've heard this -- I've come to Advisory Committees before.  
3 I've heard this out in the field. I know this is an issue.  
4 Look at -- as an attorney representing districts, we don't  
5 take to hearing those cases that we're going to flip a coin  
6 on. As you're probably aware of that the districts, if they  
7 lose, have to pay the fees for the parents. So it's very  
8 expensive for the districts to go to a hearing, have to pay  
9 for their attorneys, have to pay for the services, have  
10 potentially pay for the parents' attorneys. The cases that  
11 we go to hearing -- that we say, District, you've got a good  
12 chance to prevail for this -- those are the cases we go to  
13 hearing. So we would expect -- we would anticipate that we  
14 districts should prevail more often. Because the cases where  
15 we think that there's a case where we may not win, we don't  
16 go to hearing on that.

17           **CHAIR SAVAGE:** But I -- see I disagree with you. I  
18 think you're assuming that we take any -- you know, a student  
19 or a student's attorney is taking any case regardless of win  
20 or lose. And I disagree. I think -- I think there needs to  
21 be someone who can look to see whether there has been another  
22 dramatic shift that I feel in my practice -- that I think  
23 others I've talked to feel in the same way -- that we've --  
24 whether it's real or perceived or real, there has been a  
25 shift. I feel like it affects the mediation. It affects the

1 settlements. I think it affects the IEP's. I think it  
2 affects how parents come into me because they are treated --  
3 whether it's a perception or real -- differently in IEP's now  
4 than three years ago. And so I think there has been a real  
5 shift. I don't have numbers to support that. But I think  
6 it's not just you guys take cases you know are going to win  
7 because we do the same thing. We would be settling every  
8 case that isn't going to win.

9 **MS. MCARTHUR:** I'm trying to be nice. And that's  
10 not easy now so I -- I have to, you know --

11 **CHAIR SAVAGE:** Look at someone else, not me.

12 **MS. MCARTHUR:** You know, last time I heard a  
13 similar charge in one of our Advisory Committee meetings, I  
14 was troubled by it, certainly. As I was troubled by  
15 McGeorge's stats with respect to winnings and losing of  
16 represented versus unrepresented parties. And I don't know  
17 whether you've ever looked at that. But that's not the way  
18 we used to speak about those stats in Advisory Committee  
19 meetings. But I found them significant. I was troubled by  
20 the idea that perhaps 95 per cent of cases are won by  
21 districts and only 5 by parents. Something immediately stuck  
22 me as problematic about that. And I found those stats -- at  
23 least at the time I looked at those quarterly things we  
24 get -- to be incorrect. And I would like to caution that if  
25 we're going to have a discussion about this that perhaps we

1 table it to January and have it based upon stats or the  
2 assurance that what the web input is, is in fact correct.

3 **MS. BARDET:** Roberta?

4 **CHAIR SAVAGE:** Yes.

5 **MS. BARDET:** Two things. In terms of Carl's  
6 comment, presumably there's been no change in how districts  
7 approach bringing cases to hearing. So there shouldn't have  
8 been a shift based upon results from when SEHO was hearing  
9 cases and when OAH was hearing cases. And also if we do look  
10 at win-loss ratios, I suggest that we cannot look at the  
11 stats that have been published in quarterly reports because I  
12 just know an example is if a parent loses nine out of ten  
13 issues but wins on, you know, two hours of speech and  
14 language comp. ed., that's considered a split decision.

15 **CHAIR SAVAGE:** Right.

16 **MS. BARDET:** So I think we'd have to not, you know,  
17 actually dig in and actually re-read all the decisions.

18 **MS. BROCK:** But I think we have to --

19 **MS. MCARTHUR:** (Inaudible) must be accurate.

20 **CHAIR SAVAGE:** No, I agree with you. I absolutely  
21 agree. Because I think -- that's why I kept saying whether  
22 it's real or perceived. Because I don't -- I don't know  
23 those statistics personally and I --

24 **MS. MCARTHUR:** Even if it's perceived -- forgive me  
25 for interrupting. I think we still have to address it. I

1 appreciated what Judge Laba said about addressing perceptions  
2 even if OAH believes that that's not what's actually  
3 happening --

4 **JUDGE LABA:** And what I would ask --

5 **MS. MCARTHUR:** And I think we have to start with  
6 some accuracy.

7 **JUDGE LABA:** Right. And I had asked Roberta if  
8 this topic came up to ask all of you to give me is the same  
9 thing you suggested, Susan, is -- what's in the quarterly  
10 report is data that CDE asked me to report.

11 **MS. MCARTHUR:** Right.

12 **JUDGE LABA:** Or asked OAH to report. And so it  
13 doesn't really give you the whole picture. Because you're  
14 absolutely right. Questions that come up -- how many of  
15 those are pro per parents versus represented parents? You  
16 know, how many were district filings because when you look at  
17 the overall picture -- and it isn't 95 -- it's parents I  
18 think are 11 per cent winning everything. Districts are like  
19 40-something per cent. And the rest are split. But then how  
20 many of those that the district prevailed on were district  
21 filed cases? How many were other filed? So there's a whole  
22 lot of data that we have. It's just a matter of -- ask me  
23 the question and on January I will absolutely bring the data  
24 that you would like. I even have old SEHO numbers and it's  
25 not as drastic as people say it is. Especially when you look

1 at the time frames. Because you have to also look at the  
2 times that the laws changed along the way. So if you look at  
3 SEHO in 1985, certainly things are different. If you look at  
4 SEHO in 2004, it's not that much different than OAH. So --  
5 what I would ask is you probably can't do it today because I  
6 know --

7 **CHAIR SAVAGE:** Uh-huh.

8 **JUDGE LABA:** -- you're running out of time --

9 **CHAIR SAVAGE:** Wait. I think we're going to move  
10 off --

11 **JUDGE LABA:** -- is to come up with data or, you  
12 know, over the next couple of months -- data points that  
13 you'd like to see. And you tell me and I will pull those  
14 numbers.

15 **MS. BARDET:** Roberta?

16 **CHAIR SAVAGE:** Carl has one quick comment. I might  
17 let you in but we're going to have to move. Yes?

18 **MR. CORBIN:** Well, the law is different. It has  
19 shifted. The burden of proof -- parents don't have to worry  
20 about that. That's a huge change. So that is going to have  
21 an impact upon the rulings.

22 **CHAIR SAVAGE:** Okay. Susan?

23 **MS. BARDET:** Yeah. I was just going to say the  
24 last year of SEHO's data was not representative of the prior  
25 years as well and we have to keep that in mind.

1           **CHAIR SAVAGE:** And I think I'm going to go back to  
2 Eliza's comment which I think is well taken. Even though we  
3 don't always agree -- is that we want to be accurate when  
4 we're talking about this. We want to know what our facts  
5 are, what they're based on. We don't want to be throwing out  
6 numbers --

7           **MS. MCARTHUR:** Right.

8           **CHAIR SAVAGE:** We don't want to be saying numbers  
9 so with that -- I'm going to stop you. Unless it's something  
10 we need to talk about. We have three issues to work out of  
11 the ALJ training. There is a recommendation that OAH  
12 disclose all training of all ALJ's on their website and that  
13 included within that -- or we can have it as a separate  
14 issue -- that then there is some entity that evaluates  
15 whether that training is sufficient. That's one.

16                   Two, there is a recommendation that OAH have their  
17 ALJ's taking a Special Education exam prior to -- passing  
18 that exam presumptively -- prior to conducting a hearing.

19                   And the third issue with respect to training is  
20 OAH -- is there a recommendation for OAH to seek waivers and  
21 I would presume it's from students' attorneys -- a waiver to  
22 have an ALJ attend an IEP. Because I think the right belongs  
23 to us.

24                   So let's start on number one. Disclosing of all  
25 training -- and I think I will separate it out. So let's

1 start with disclosing of all training of all ALJ's on their  
2 website.

3 **MS. SILVERMAN:** Just general. Not per ALJ. Just  
4 the general -- just the training.

5 **MS. BROCK:** No. Per ALJ.

6 **CHAIR SAVAGE:** Per ALJ on their website. So we  
7 have one, two, three, four, five. I'm just going to assume  
8 if you don't raise your hand your vote is no.

9 **MS. MCARTHUR:** Right. Unless you modify it  
10 slightly. Because I'm concerned about updating.

11 **CHAIR SAVAGE:** Okay. So --

12 **MS. MCARTHUR:** In other words, there is -- you  
13 know, training and experience and learning --

14 **CHAIR SAVAGE:** So what do you want to modify it by?

15 **MS. BROCK:** Well, their experience would be on  
16 their autobiography. I mean, that they have on the websites.

17 **MS. MCARTHUR:** Yeah, but training gets updated on  
18 an ongoing basis. So maybe some modification in that there  
19 is disclosure and updating -- I mean I hear -- you know, I'd  
20 like ALJ's to spend more time in actual training than in  
21 updating their bios or whatever. But --

22 **CHAIR SAVAGE:** Okay.

23 **MS. MCARTHUR:** -- but maybe it --

24 **MS. BROCK:** Every six months?

25 **MS. MCARTHUR:** -- annual basis or six months --

1           **MS. BROCK:** Yeah.

2           **MS. MCARTHUR:** Whatever.

3           **MS. BROCK:** Every six months if it was --

4           **CHAIR SAVAGE:** Okay. On (inaudible).

5           **MS. BROCK:** -- at least be somewhat --

6           **MR. REZOWALLI:** And you're not asking for what  
7 training they had prior to becoming ALJ's --

8           **MS. BROCK:** Yeah, it's pretty --

9           **MR. REZOWALLI:** -- you're only talking about  
10 afterwards?

11           **CHAIR SAVAGE:** So I think -- I think we're going to  
12 leave it as we have five people in favor of OAH producing  
13 that on their web. We have four -- we have some issues with  
14 it.

15           The second part of that is should there be some  
16 other entity that evaluates the training and whether it's  
17 sufficient? In favor of having that person -- that entity?  
18 One. Okay.

19           The next is the issue of having the ALJ's before  
20 they conduct a hearing take a Special Education exam and pass  
21 it. One.

22           And then the fourth -- third, fourth -- OAH seeking  
23 waivers from students' attorneys to attend IEP meetings. And  
24 I think that's unanimous.

25           **MS. MCARTHUR:** Yes.

1           **CHAIR SAVAGE:** Okay. We are going to move on. I  
2 think as a group we're going to have to keep this on the  
3 January agenda so we need to continue bringing in topics but  
4 we're going to move from it now. We are now at Access to  
5 Information. And we're just slightly behind. But I think we  
6 can move quickly on this.

7           The issue that we're going to address is the access  
8 of information OAH has to the public. And the first Dana had  
9 raised -- and I think I'll just shorten it for her -- is  
10 there -- OAH produces and publishes a list of attorney and  
11 advocates free and low cost and I think Dana's experience --  
12 and Dana can tell me if I'm wrong. She called most everyone  
13 on that list and they were not free or low cost in her --

14           **MS. JOHNSON:** I called every single one. It took  
15 about a year.

16           **CHAIR SAVAGE:** And so the question was --

17           **MS. JOHNSON:** I'm still waiting for phone calls  
18 back, too, from some others. I've never got them.

19           **CHAIR SAVAGE:** So the question is, what is that  
20 criteria? Can we get from OAH what their criteria is and  
21 maybe Judge Laba can talk -- speak to that. How do you get  
22 put on that list and there was an agreement down in Southern  
23 California at least by two members that OAH should define  
24 what is free or low cost.

25           **JUDGE LABA:** And right now the sole criteria for

1 getting on the list is we have an application form and you  
2 certify -- I think under penalty of perjury -- that you  
3 provide free or low cost services. The reason for that is we  
4 do not, you know -- what's free and low cost to Roberta may  
5 not be free and low cost to Stephen which may not be free or  
6 low cost to Valerie in Southern California, etc. Everybody  
7 has a different definition so we took that road in putting  
8 out the criteria for becoming someone on the list.

9 **MS. JOHNSON:** Free -- that was where I guess I had  
10 the most difficulty. Because there's really -- I mean, it's  
11 like finding the winning lottery ticket for representation.

12 **JUDGE LABA:** Free meaning that they don't charge  
13 anybody? Or that they're going to just seek their costs from  
14 the school district. Who knows what those mean? The  
15 Education Code did not define any of this for us. So this  
16 may not be something that we can fix.

17 **MS. JOHNSON:** Yeah, but it's misleading.

18 **JUDGE LABA:** It may be something that needs to be  
19 changed in the Education Code. I don't know the answer to  
20 that. But we went with the unclear words of the Education  
21 Code that don't really define them.

22 **MR. CORBIN:** Is that what the codes says? Free and  
23 -- it says free and low?

24 **MR. REZOWALLI:** Yes.

25 **MS. MCARTHUR:** Yeah.

1           **MR. ROSENBAUM:** Can I have another question for the  
2 judge? Because this is something we deal with in terms  
3 of -- part of the problem, Dana didn't mention this in  
4 particular -- but it's the updating which I think anybody's  
5 list is always problematic. And we go through this ourselves  
6 in terms of coming up with a referral list. Do you in  
7 addition to ask them to certify as to free or low cost, what  
8 other criteria do you use to get on the list?

9           **JUDGE LABA:** That's it. You give us -- you fill  
10 out the form and it -- the form asks you certain things like  
11 what geographical area do you serve?

12           **MR. CORBIN:** Uh-huh.

13           **JUDGE LABA:** Do you serve a certain population?  
14 Things like that.

15           **MS. JOHNSON:** Does it say --

16           **JUDGE LABA:** And we update the list. Every time we  
17 get a new request to be added we update the list and it's  
18 updated real time. And then every year we're going to add --  
19 this is the first year we've done it this way -- but every  
20 year in May everybody on the list will be asked to re-certify  
21 themselves --

22           **MR. CORBIN:** Oh.

23           **JUDGE LABA:** -- and give updated information and if  
24 you -- they don't re-certify they won't end up on the list.

25           **MR. CORBIN:** And is there a disclaimer about

1 quality or anything else --

2 **JUDGE LABA:** No, I don't think so --

3 **MR. CORBIN:** This is what I always think is the  
4 hard part.

5 **JUDGE LABA:** -- and I'd have to go back and look at  
6 the application form myself. It is online.

7 **MR. CORBIN:** Uh-huh.

8 **JUDGE LABA:** And it remains online to take a look  
9 at it.

10 **MR. CORBIN:** Okay. I'll --

11 **JUDGE LABA:** But if, again, if we need to clarify  
12 in that application process --

13 **MR. CORBIN:** Uh-huh.

14 **JUDGE LABA:** -- for the next time around --

15 **MR. CORBIN:** Uh-huh.

16 **JUDGE LABA:** -- something then suggestions about  
17 that would be welcome.

18 **MS. JOHNSON:** You know I wasn't done but okay.

19 **CHAIR SAVAGE:** So I think this is a good issue. I  
20 don't know if this is an issue that -- how much we can get  
21 out of it --

22 **MS. JOHNSON:** I guess the form. Maybe the form  
23 that's, you know, completed by the attorneys that want to be  
24 on it. If they're free -- they're truly free -- and they  
25 actually represent a student it will be a free

1 representation -- great, let them check a box that, you know,  
2 they possibly will provide free representation. If they're  
3 going to give just free advice possibly, like Protection and  
4 Advocacy which I believe they allot you like 32 minutes or  
5 something. They're --

6 **MR. ROSENBAUM:** No, they don't have --

7 **MS. JOHNSON:** I mean, this is what I was told when  
8 I called. So --

9 **MR. ROSENBAUM:** Who told you that?

10 **MS. JOHNSON:** So I was like, well, if we only have  
11 like 32 --

12 **MR. CORBIN:** 32 minutes.

13 **MS. JOHNSON:** We only have 32 minutes per person  
14 that calls in and this is all we're allotted for our funding  
15 and so forth but we don't represent anyone. So I'm like  
16 okay. So, well, there's really nobody free really out there.  
17 And so, wow, I've went over my minutes just getting that  
18 information. I've wasted three to hear that.

19 **CHAIR SAVAGE:** Okay, so hold on. Eliza?

20 **MS. MCARTHUR:** May I make a suggestion? Because I  
21 think what Dana is saying is well taken. I mean, you know,  
22 why should parents spend hours and hours calling people who  
23 will never, for instance, be free? But instead of perhaps,  
24 Dana, a form -- an amendment to the form that is so extensive  
25 where we've had boxes to check for different --

1           **MS. JOHNSON:** Sure.

2           **MS. MCARTHUR:** -- versions of what the attorney  
3 might be willing to do in terms of free advice or free  
4 representation in litigation and so on, we could maybe have  
5 on the form just a place where the attorney would be directed  
6 to, you know, give any information that would be relevant to  
7 a parent who's seeking free advice for some period of time or  
8 whatever. Do you know what I'm saying? I mean that's  
9 logical that you would then --

10           **MS. JOHNSON:** It's a colossal waste of time. And  
11 that was -- that's I guess my biggest pet peeve with it. And  
12 for some low income families that are calling and calling all  
13 these numbers that are not 800 numbers and they're running up  
14 their phone bill to make these wasteful phone calls as well.  
15 Again, it's just an added expense when their child -- and my  
16 version would be that they're already a victim. Why is it  
17 now costing them even more money to make phone calls that are  
18 just wasteless and needless.

19           **CHAIR SAVAGE:** Okay.

20           **MS. JOHNSON:** So that's all.

21           **CHAIR SAVAGE:** I think the question is, is there  
22 something we can recommend to OAH? Southern California  
23 seemed to recommend that OAH should define it which Judge  
24 Laba has just done, focusing on the Education Code.

25           Is there anything more? Do we agree with that?

1           **MS. MCARTHUR:** Just have a code. Just --

2           **MS. JOHNSON:** Well, they used to. On the old ones.

3           **MS. MCARTHUR:** When I come to -- when I think about  
4 it eventually that list has a code and each code means  
5 something, right? And those codes -- that information is  
6 taken from whatever application the attorney is providing,  
7 right? So it seems to me if there were a code for like, you  
8 know, I'm free, or I'm free to some degree, or just free --  
9 so there's something about this attorney that's free.

10           **CHAIR SAVAGE:** But I think that's on there. I  
11 think that's -- I think it already -- because they have to  
12 designate whether they are free or --

13           **MS. MCARTHUR:** No, see but free -- Dana's point  
14 about being free --

15           **MS. JOHNSON:** If it's free or --

16           **MS. MCARTHUR:** -- or low cost and whatever the heck  
17 that means.

18           **MR. ROSENBAUM:** May I make a suggestion on that?

19           **CHAIR SAVAGE:** Sure.

20           **MR. ROSENBAUM:** And again not to make this too  
21 cumbersome in the application process or the collection of --

22           **CHAIR SAVAGE:** Right.

23           **MR. ROSENBAUM:** -- assembling that information but  
24 yes, that is a large loophole there. You know, free or  
25 reduced. My guess is that free would mean free initial

1 consultation or free, you know, no down -- no installments  
2 paid and then if you prevail this is the fee arrangement.  
3 But no one's going to be completely free. Although I do have  
4 to give this correction -- Protection and Advocacy -- now  
5 called Disabilities Rights California -- does not have a  
6 quota on its time. It does represent. But -- so I think  
7 it's going to be pretty nuanced and I don't know how there  
8 can be a way to report that on the web page other than a  
9 brief narrative that is probably going to require  
10 unfortunately some of that phone calling. But maybe there  
11 could be a study of the form being a little bit more fine  
12 tuned.

13 **MS. JOHNSON:** It used to be. That's what I'm  
14 saying. For the one that was originally there and then from  
15 the first meeting -- this public meeting that I attended a  
16 year ago -- there was that list and there was a big public  
17 outcry for a new list and on the new list you would have N  
18 for no cost and L for low cost and low cost, I think --

19 **CHAIR SAVAGE:** So --

20 **MS. JOHNSON:** -- needs to be somewhere defined,  
21 too. Low cost --

22 **MR. ROSENBAUM:** That's going to be a reach.

23 **MS. JOHNSON:** -- the lowest cost I found was a  
24 \$5,000 retainer.

25 **CHAIR SAVAGE:** Okay, I'm going to cut you off

1 because we need to keep moving and I think we got your -- we  
2 know -- I think we know the issue. I'm not trying to  
3 minimize --

4 **MS. JOHNSON:** Sure.

5 **CHAIR SAVAGE:** -- it at all. So do we want to  
6 recommend that OAH revise their form to include a particular  
7 box that says 'we provide free service' and that attorney is  
8 making the representation of whatever that free might seem.  
9 And so that when the list comes out there's a specific  
10 designation -- some form of free.

11 **MS. JOHNSON:** Right. And I'm sure we'll find that  
12 one on the list, right?

13 **CHAIR SAVAGE:** Okay. But that's a different issue.  
14 So as a recommendation do we -- how does the Committee feel  
15 about having OAH revise their form to add a box specifically  
16 for 'free' versus 'low cost'?

17 **MS. SILVERMAN:** I think as long as it's -- oh, I'm  
18 sorry. As long as that free is defined I think you just said  
19 that because free can be a consultation versus we're going to  
20 be free until we charge your attorney -- I mean the other  
21 attorneys and then if we don't get it from them we're going  
22 to come back to you. So I think it has to be really clear.

23 **CHAIR SAVAGE:** I think you're asking for  
24 information students attorneys are not necessarily going to  
25 disclose. They'll say --

1           **MS. MCARTHUR:** Exactly.

2           **CHAIR SAVAGE:** And so I think either it's free --

3           **MS. MCARTHUR:** That's part of the -- that's part of  
4 the contract between the parent and --

5           **CHAIR SAVAGE:** Right. So it's either free or it's  
6 low cost. So I think --

7           **MR. REZOWALLI:** I think you're asking a question  
8 you know what the answer is going to be.

9           **MS. MCARTHUR:** Right.

10          **MR. REZOWALLI:** You asked do you want to direct --  
11 we don't know what's going to happen when that occurs. We  
12 can get free if I win the hearing.

13          **MS. SILVERMAN:** Exactly.

14          **MR. CORBIN:** (Inaudible) it's certified.

15          **MR. REZOWALLI:** I think -- for instance CDE has a  
16 website that has non-public agencies, non-public schools.  
17 There's a web data base you go to -- click on a school and it  
18 will tell you that information on it. And I don't know if  
19 something like that can be available where you have to fill  
20 out a form which describes it that can be transcribed onto  
21 part of the OAH website. See, that's something that we know  
22 -- if I want to look up the school --

23          **CHAIR SAVAGE:** Right.

24          **MR. REZOWALLI:** -- in Connecticut someplace and see  
25 what they cost I can do it with a click onto that.

1           **CHAIR SAVAGE:** I think you're -- I think, you know,  
2 attorneys as a whole --whether we're district attorneys,  
3 students attorneys, corporate counsel -- that information is  
4 not information we present.

5           **MR. ROSENBAUM:** How about this --

6           **MR. CORBIN:** Our law firm does. We present it.  
7 We're a public agency.

8           **CHAIR SAVAGE:** And so I think -- I think the issue  
9 is, is there something we can ask OAH to do? Steve? We're  
10 going to move quick.

11           **MR. ROSENBAUM:** How about if one -- okay, the two  
12 boxes but if one checks -- whichever box one checks, that one  
13 then certifies that on their website -- and I'm assuming most  
14 of them -- that they then explain in all the terms they want  
15 what that means.

16           **CHAIR SAVAGE:** Or in a first call they'll explain.

17           **MR. ROSENBAUM:** Right.

18           **CHAIR SAVAGE:** Okay.

19           **MR. ROSENBAUM:** So that that form -- they don't  
20 have to disclose it at that moment. It's not burdensome to  
21 OAH and yet the consumer can -- has that --

22           **CHAIR SAVAGE:** Okay. So do -- the motion is that  
23 we recommend to OAH that they revise their form to add a box  
24 -- separate box -- free, separate from low cost -- and on the  
25 -- in either --

1           **MR. ROSENBAUM:** Uh-huh.

2           **CHAIR SAVAGE:** -- I would say that this attorney is  
3 certifying that in their -- on their website or in their  
4 initial call with a family that they are defining what those  
5 terms mean to them.

6           **MS. SILVERMAN:** So a disclaimer. With a  
7 disclaimer.

8           **CHAIR SAVAGE:** Yes. That the attorney will be  
9 providing that information. So do we have a recommendation?  
10 Yes or no? Yes?

11           **MS. SILVERMAN:** I would, too, with a disclaimer.

12           **MR. ROSENBAUM:** What would the disclaimer be?

13           **MS. SILVERMAN:** Well, the disclaimer -- well, the  
14 disclaimer would be that upon the first phone call they would  
15 define what free or low cost meant.

16           **MR. CORBIN:** Or on the website.

17           **CHAIR SAVAGE:** Or on the website. Right. So we  
18 did get a comment when we were discussing ALJ training. It  
19 came in a little delayed. "Parents want data. We want that  
20 information available to us to analyze and available online  
21 but to get information we have to get FOIA papers to get it."  
22 So I think that fits with Tammy Brock -- and I think she's  
23 gone -- the concern about the disclosure -- getting that  
24 information about the ALJ's online which we had a split on.  
25 I think it's also going to take us -- it fits well with the

1 issues we're talking about. In addition to ALJ training, how  
2 do we get access to the decisions, the orders, the other  
3 information which OAH has to present. So I'm going to go  
4 there now. The issue - the question that we're going to talk  
5 about now is, are there any recommendations for improvement  
6 to the current web search engine? I think for the afternoon  
7 public just come in and comment as you have been. I want to  
8 open this up to the Committee. I think Susan --

9 **MS. BARDET:** Yes.

10 **CHAIR SAVAGE:** -- was the one so if you want to --

11 **MS. BARDET:** Sure.

12 **CHAIR SAVAGE:** -- lead?

13 **MS. BARDET:** I've heard lots of concerns about the  
14 limited information that's available using OAH's search  
15 engine. Either you get so many that you can't possibly sift  
16 through them all or so limited that there's not enough there.  
17 We need something that's just right.

18 Also as we talked about before, there are very few  
19 orders on the website. We've already talked about how not  
20 being able to look at NOI's and how those are being decided  
21 and the rationale behind it means that both parents and  
22 school districts are in the dark. We've talked about this I  
23 think at virtually every Advisory Committee meeting and I  
24 think there's been a lot of interest in seeing a drop down  
25 menu for both substantive and procedural issues such as the

1 ones -- and I'm not saying this was the best ever but I'm  
2 just comparing it -- that SEHO did have that and it had the  
3 school district, the year case filed, the case number, type  
4 of disability and, of course, procedural issues were also set  
5 out there in a drop down menu.

6           It's really important to be able to research  
7 phrases as opposed to individual words so that the results  
8 are meaningful. Even though it's wonderful that we're  
9 getting decisions by subscription -- I think that's terrific.  
10 I would think that we also want to consider having orders by  
11 subscription as well -- email subscription -- and certainly  
12 all orders being published. Even though we have these  
13 subscriptions, many parents and certainly school district  
14 personnel would not be subscribing and so we need to have a  
15 very effective search engine available to the public and to  
16 school districts who are not using attorneys because they're  
17 not going to want to sift through every decision being  
18 rendered.

19           The other recommendation is that right now the list  
20 of all decisions -- it's very hard to read. It's just  
21 numbers. There's no school district or public agency named  
22 to quickly go through to see if there's something you're  
23 trying to find if you don't know the case number. And also  
24 the orders are very hard to find lost amongst the decisions.

25           Another recommendation I've heard is that when you

1 do pull up a decision is that if the searched word --  
2 hopefully the phrase -- could be highlighted so that you  
3 can -- since decisions can be quite lengthy -- to somehow be  
4 able to look -- find what you're looking for.

5 **CHAIR SAVAGE:** I think this is a good issue. I  
6 think we all want to have better access. I think we've  
7 talked about it a couple of times today. Access to more  
8 orders I hear a lot. I am interested in hearing more about  
9 people's comments about how we get the information. I find  
10 it a fairly difficult system to search through. I don't know  
11 about other people who use the system. I think there is -- I  
12 think my bigger issue is the limited amount of orders. I  
13 think we get the --

14 **MR. ROSENBAUM:** Does this institute the discussion?

15 **CHAIR SAVAGE:** So we want to talk about decisions  
16 and then orders?

17 **MR. ROSENBAUM:** Yeah.

18 **CHAIR SAVAGE:** Let's start with orders. I think  
19 they just need to have more. I'd like to see -- since  
20 putting them into a PDF format seems to be a simple process  
21 and just posting them. I don't -- I wonder why we just can't  
22 get them all -- all orders.

23 **MS. SILVERMAN:** Well, that would be a little  
24 cumbersome I think. I mean there's so many. But certainly a  
25 sampling or a good representation of the variety of orders --

1 NOI's, stay put, you know, motions to continue -- a variety  
2 dismissal -- whatever it might be to at least have a really  
3 broad sampling. I think that in terms of law and motion  
4 practice --

5 **CHAIR SAVAGE:** Uh-huh.

6 **MS. SILVERMAN:** -- and having been a law and motion  
7 attorney in the past there could be 40 a day or 30 a day. I  
8 think that, you know, opposed to the decisions which there  
9 really aren't that many -- I think orders could be really  
10 cumbersome. But a good sampling I think would be extremely  
11 helpful.

12 **CHAIR SAVAGE:** Yeah, I would like them all.

13 **MS. BARDET:** I would, too.

14 **CHAIR SAVAGE:** And I think getting them access, you  
15 know, then I weed through what I don't want. I can  
16 understand what you're saying but my preference is to have  
17 them all. But that was maybe my preference.

18 **MR. CORBIN:** Roberta, you're not talking like a  
19 dismissal order or a continuance?

20 **CHAIR SAVAGE:** The minute order.

21 **MR. CORBIN:** I mean just an actual -- an order --

22 **CHAIR SAVAGE:** Like a motion to continue.

23 **MR. CORBIN:** So under those categories you'd like  
24 to see them all.

25 **CHAIR SAVAGE:** Right. The orders that get

1 issued -- yeah, anything that has analysis that we've been  
2 talking -- an NOI, a dismissal, a continuance --

3 **MS. MCARTHUR:** It has a substantive discussion of  
4 the law.

5 **CHAIR SAVAGE:** Right. Thank you.

6 **MS. MCARTHUR:** Okay.

7 **MS. SILVERMAN:** All right. So maybe that's it. If  
8 it has a substantive discussion of the law then that would be  
9 very helpful.

10 **CHAIR SAVAGE:** Right.

11 **MS. SILVERMAN:** But if it's just kind of like a  
12 brief, you know --

13 **MR. CORBIN:** A minute order.

14 **CHAIR SAVAGE:** (inaudible) granted -- no, no. I'm  
15 only talking about ones that have an analysis included.

16 **MS. BARDET:** Of course, someone earlier had asked  
17 for more substantive --

18 **CHAIR SAVAGE:** Right.

19 **MS. BARDET:** -- issues within the orders so --

20 **CHAIR SAVAGE:** So do we have a -- is there more  
21 discussion we want to have on the issue of orders?

22 **MR. ROSENBAUM:** I -- if I could -- yeah. I liked  
23 Lenore's initial suggestion but given that there's nothing in  
24 there now then I suppose you're building from zero.

25 **CHAIR SAVAGE:** There is something there. It's a

1 very small -- there's a small amount there.

2 **MR. ROSENBAUM:** Just on the -- okay.

3 **CHAIR SAVAGE:** Yeah. You have to switch not from  
4 the decisions, you have to click into an order section.

5 **MR. ROSENBAUM:** But I guess I would also just want  
6 to have representative orders so with analysis and at some  
7 point it seems to me it's going to get redundant.

8 **CHAIR SAVAGE:** Yeah.

9 **MR. ROSENBAUM:** And administratively difficult to  
10 put on. But --

11 **CHAIR SAVAGE:** I -- okay.

12 **MR. ROSENBAUM:** And orders with analysis.

13 **MS. MCARTHUR:** Can I just say one thing? There are  
14 two concerns that I have. One is kind of silly and that is  
15 because I'm tech challenged. I don't know to what degree  
16 having all orders that have a substantive discussion of the  
17 law will discourage a really good substantive discussion of  
18 the law.

19 **CHAIR SAVAGE:** Right.

20 **MS. MCARTHUR:** But more importantly, until the  
21 search engine is dealt with I don't see how a barrage of, you  
22 know, thousands of orders is going to be really that helpful.  
23 I mean do you have that time?

24 **CHAIR SAVAGE:** No. Good point. Yeah, that's a --  
25 that's --

1           **MS. SILVERMAN:** And I have to say that there's been  
2 improvement. I mean since -- over the last couple of years I  
3 just want to say there's been improvement in looking for  
4 cases but I agree that there needs to be a more accessible  
5 way of finding --

6           **CHAIR SAVAGE:** See I don't think there has been.

7           **MS. SILVERMAN:** Really?

8           **CHAIR SAVAGE:** No, but that's just me. So I --  
9 okay, Dana.

10          **MS. JOHNSON:** I just would like to see something on  
11 it also just to add on to the handbook so I don't forget.  
12 Just because I doubt there's probably anything in there and  
13 again, you're saying you're tech challenged. Imagine an  
14 unrepresented parent that can't take some time to get down to  
15 the library like to be able to see, you know -- self  
16 education is the only --

17          **CHAIR SAVAGE:** So would you make a recommendation?

18          **MS. JOHNSON:** Well, you said, well if you click to  
19 this -- I just was trying to follow what you said.

20          **CHAIR SAVAGE:** So make it part of the  
21 recommendation -- we could make a recommendation that OAH  
22 provide information about the search engine in the Parent  
23 Handbook. How to search it currently --

24          **MS. JOHNSON:** Uh-huh. Sure.

25          **CHAIR SAVAGE:** -- but so that's --

1           **MS. SILVERMAN:** How to search for orders and  
2 decisions.

3           **CHAIR SAVAGE:** Right. But then that gets to  
4 Eliza's question which I think is Susan's issue is how to  
5 make this a more workable search engine.

6           And I agree it needs to be. I don't if we can do  
7 this without an IT person.

8           **MS. SILVERMAN:** Well, you I think we -- we put it  
9 out there and say this is of high importance.

10          **MS. JOHNSON:** Yeah. Absolutely.

11          **MS. SILVERMAN:** So in January could we get some  
12 feedback as to steps being taken to make the website more  
13 accessible.

14          **MS. BARDET:** Well, you know, Roberta, actually as I  
15 recall I think a whole year -- at least a year ago the IT  
16 person did come to one of these Advisory Council meetings and  
17 heard the concerns and I haven't heard back what her  
18 recommendations were --

19          **CHAIR SAVAGE:** Okay.

20          **MS. BARDET:** What's possible. So --

21          **CHAIR SAVAGE:** Do we know anything, Judge Laba?

22          **JUDGE LABA:** Yes.

23          **MR. ROSENBAUM:** Back to the hot seat.

24          **JUDGE LABA:** (inaudible). You're right. A year  
25 ago Phoenix Vigil who is our liaison with our OT Department -

1 - our OTR Department came. But at that time the entire State  
2 webpage was going through a revision and it was going to look  
3 entirely different. We were adding new tabs so when you look  
4 at the changes to the web page in the last year they haven't  
5 been to search engines but they've been to the overall web  
6 page. There's a lot more information available. It's  
7 organized in different fashions which we hope make it easier  
8 to find information. But the search engine issue alone is  
9 something that's still being addressed because it's not just  
10 an OAH issue. We're part of DGS which is a bigger agency and  
11 so getting certain things changed on the web page is -- I've  
12 got to go through a lot to do that. So that's why I really  
13 need specific recommendations like you're making today to be  
14 able to take those back. But when she came it was an overall  
15 new look to the web page and all of those changes have  
16 already been implemented.

17 **CHAIR SAVAGE:** So I think we need to have a discuss  
18 -- have a brief discussion --

19 **MS. JOHNSON:** We have a question.

20 **CHAIR SAVAGE:** Go ahead, Steve.

21 **MR. ROSENBAUM:** Yes. So you're saying that there  
22 is the internal capacity at least within DGS to make these  
23 changes. Or does this mean consulting with someone outside?

24 **JUDGE LABA:** And I don't know the answer to that  
25 question. That's where I'm tech challenged. Because I don't

1 know what it's going to take to do a drop down menu. I was  
2 the person that worked with Paul Hinkle at CDE to design that  
3 web page for SEHO. And we went through about a year of  
4 designing and trying to figure out what criteria came up.  
5 The problem you run into with drop downs is -- as you know  
6 with SEHO they become outdated. And then to change it and  
7 then reevaluate all the cases to fit in which criteria --  
8 that's one of the drawbacks of a drop down. I'm not saying  
9 it makes it impossible -- it's just a drawback. So it's  
10 things to think about when you do that. It's like, you know,  
11 how long is this going to last me if I have drop downs? How  
12 easy is it to modify it? So it's things like that. So  
13 there's a lot to be considered but I don't know whether --

14 **MR. ROSENBAUM:** What's the internal capability?

15 **JUDGE LABA:** -- OAH can have its own change to the  
16 web page that DGS doesn't accept.

17 **MR. ROSENBAUM:** Or even DGS -- because as Susan  
18 said - I mean it is a longstanding issue. I'm just wondering  
19 within DGS or OAH is there -- if there's the technical  
20 capacity much less the bureaucratic process I hear you say.

21 **JUDGE LABA:** And I don't know enough about the  
22 technical aspects of --

23 **MR. ROSENBAUM:** Okay.

24 **JUDGE LABA:** -- the web page to be able to answer  
25 that.

1           **MR. ROSENBAUM:** Okay.

2           **CHAIR SAVAGE:** Eliza?

3           **MS. MCARTHUR:** Well, couldn't we just -- I mean ask  
4 the people who know? Like the IT people? Can an IT person  
5 come back again and --

6           **JUDGE LABA:** Right.

7           **MS. MCARTHUR:** -- tell the person what it is we're  
8 looking for in the end process? And then that person tells  
9 us how to get there.

10          **JUDGE LABA:** Well, and the person that came to do  
11 the presentation is not an IT person.

12          **MR. ROSENBAUM:** Ah.

13          **MS. BARDET:** Okay.

14          **JUDGE LABA:** I would probably have to request an IT  
15 person come from DGS because that's where they have to --

16          **MS. MCARTHUR:** Right.

17          **JUDGE LABA:** You can make that recommendation and I  
18 can -- Susan?

19          **MS. BARDET:** Yeah, I would say we make specific  
20 recommendations now --

21          **CHAIR SAVAGE:** To have them addressed in January?

22          **MS. BARDET:** -- to have them address --

23          **CHAIR SAVAGE:** What do we want to have?

24          **MS. BARDET:** Well, I think we should have a  
25 discussion about whether or not people agree that drop down

1 menus are something we'd like to see come back, for example.

2 That would be --

3 **MS. MCARTHUR:** Susan, I don't -- I'm tech stupid.

4 I don't know what that means.

5 **MS. BARDET:** Okay, so I think --

6 **MS. MCARTHUR:** A result is what we want.

7 **CHAIR SAVAGE:** I think what we want is better  
8 ability to --

9 **MR. ROSENBAUM:** Search.

10 **CHAIR SAVAGE:** -- search. So we can put autism and  
11 sequoia -- or so we can get more --

12 **MS. MCARTHUR:** Phrases. More of a Lexis type or  
13 Westlaw type.

14 **CHAIR SAVAGE:** I don't know if -- I don't know.

15 **MS. BARDET:** We actually -- I think we would want  
16 both. Because attorneys would be more likely to use phrases  
17 whereas parents and perhaps unrepresented directors would  
18 rely on drop down -- I actually used the drop down menus,  
19 too, when it was available. It was just quick -- really  
20 quick.

21 **MS. SILVERMAN:** Do you want me to review what I put  
22 down?

23 **CHAIR SAVAGE:** Right. And before -- and there's  
24 another one coming in from the webcast is that to have the  
25 cases searchable by ALJ's --

1           **MS. SILVERMAN:** You can do that now.

2           **CHAIR SAVAGE:** -- to see if some have never sided  
3 with parents wanting an LRE or inclusion placement, etc. So  
4 I think it's figuring out how to get a searching system that  
5 you can search by an ALJ. You could search by a school  
6 district.

7           **MS. SILVERMAN:** You can do that -- that you can do  
8 now.

9           **MS. MCARTHUR:** That you can do. Yeah.

10          **MR. REZOWALLI:** I think they're telling us not as  
11 well as a search engine because you're talking about content  
12 that you want in there.

13          **CHAIR SAVAGE:** Right.

14          **MR. REZOWALLI:** And you're also talking about how  
15 do you find it.

16          **CHAIR SAVAGE:** Right. I think --

17          **MR. REZOWALLI:** So there's two different issues.  
18 One is do you want to have all orders or a sampling of orders  
19 or only substantial issues? What do you want in there?

20          **CHAIR SAVAGE:** Right.

21          **MR. REZOWALLI:** And how do you find it once it's in  
22 there.

23          **MS. BARDET:** I think we're still just talking the  
24 decisions -- the search part and --

25          **MR. ROSENBAUM:** Can I make a recommendation --

1           **CHAIR SAVAGE:** Yeah. We want to start making  
2 those.

3           **MR. ROSENBAUM:** One, that we ask the appropriate  
4 tech -- IT person to come --

5           **CHAIR SAVAGE:** Okay.

6           **MR. ROSENBAUM:** -- to January. And before then I  
7 think we keep the request as broad as possible. That we ask  
8 them to look at ways to improve the ability to search  
9 decisions, including consideration of drop down menus and I  
10 think we leave it as broad as that for basically fine tuning  
11 the search process.

12           **CHAIR SAVAGE:** Susan, do you have specifics?

13           **MS. BARDET:** Yes. I do. I'd rather have them have  
14 the IT person be ready to address feasibility and timelines  
15 for implementation so not just come on and we'll talk about  
16 it again.

17           **MR. CORBIN:** Oh, no. Right.

18           **CHAIR SAVAGE:** Okay.

19           **MS. BARDET:** But I did -- as I said the options  
20 that I did write down was the name of the school district,  
21 the year case filed, case number, type of disability -- but  
22 also I know for procedural issues you can just look at the  
23 ones that are on the SEHO website from decisions earlier than  
24 whatever -- whatever year it was and also substantive issues.  
25 So in other words you or I could get that, you know, typed up

1 and sent over to whomever.

2 **CHAIR SAVAGE:** You also said phrases as opposed to  
3 words.

4 **MS. BARDET:** Yes. And that's the next one, too.  
5 Phrases. For example, I tried to look up 'other health  
6 impaired' to see what would come up if I typed that in and,  
7 of course, I got all the decisions with 'other', all the  
8 decisions with 'health' and all decisions with 'impaired.'

9 **CHAIR SAVAGE:** Okay.

10 **MS. BARDET:** And that's a pretty basic issue. And  
11 then highlighted key words --

12 **CHAIR SAVAGE:** Okay.

13 **MS. BARDET:** -- was the next one. When we pull up  
14 a decision.

15 **CHAIR SAVAGE:** Okay. So our recommendation right  
16 now is that OAH have an IT person present at our next meeting  
17 to discuss the feasibility and timeline for improving the  
18 search engine and with specific improvements to address  
19 searching by district, searching by case number, searching by  
20 year, searching by disability, searching by procedural issues  
21 that were listed on the McGeorge website, searching by  
22 substantive issues that were listed on the McGeorge  
23 website --

24 **MS. BARDET:** Or new ones.

25 **CHAIR SAVAGE:** -- or new ones --

1           **MS. BARDET:** Or new ones, right.

2           **CHAIR SAVAGE:** -- phrases using the ability to  
3 search phrases versus just words and then having the key  
4 words highlighted.

5           **MS. BARDET:** Right. In the result.

6           **CHAIR SAVAGE:** In the result. Right.

7           **MS. BARDET:** Right. Uh-huh.

8           **CHAIR SAVAGE:** Highlighted in the decisions that  
9 you -- right. So do we have --

10          **MR. ROSENBAUM:** Add to that -- what about  
11 suggesting that whoever this person is be familiar with  
12 Westlaw, Lexis-Nexis type of searches so that they can see --

13          **MS. MCARTHUR:** Uh-huh.

14          **MS. BARDET:** Or LRP.

15          **MR. ROSENBAUM:** What?

16          **MS. BARDET:** Or LRP.

17          **MR. ROSENBAUM:** LRP. Right.

18          **CHAIR SAVAGE:** Uh-huh.

19          **MR. ROSENBAUM:** So they have some familiarity with  
20 that.

21          **CHAIR SAVAGE:** So with other legal search engines.

22          **MR. ROSENBAUM:** With other legal search engines.

23 Okay.

24          **MS. BARDET:** Uh-huh.

25          **MR. ROSENBAUM:** And the final thing would be that

1 when they do come in January to be able to talk about  
2 bureaucratic administrative feasibility of these kinds of  
3 changes. Do they need to get a contract with some private  
4 consulting? Is it six months? Is it a one year? So we  
5 really know what we're looking at. Now that may be asking  
6 for too much --

7 **MS. SILVERMAN:** Well, what are the specific steps  
8 that --

9 **MR. ROSENBAUM:** Steps to get there.

10 **MS. SILVERMAN:** -- that need to be achieved.

11 **MR. ROSENBAUM:** So we can really grapple with what  
12 they are.

13 **CHAIR SAVAGE:** So it's a large recommendation.

14 **MR. ROSENBAUM:** Yes.

15 **CHAIR SAVAGE:** All in favor? It's unanimous.

16 Okay, I am going to try and fly quickly through the next two  
17 and I apologize if I insult anyone along --

18 Okay. The pamphlets or the translation?

19 **MR. ROSENBAUM:** Oh, it's got to four --

20 **CHAIR SAVAGE:** Oh, it's till four. I'm sorry. But  
21 we need to have public comment and we have two big issues.

22 **JUDGE LABA:** Okay. On the pamphlet issue, the  
23 pamphlet is being designed. It's a tri-fold that gives  
24 really basic information like who to call, where to get  
25 information, etc. But I haven't got that for you yet as a

1 draft. I should have it by January without a problem. So it  
2 is being designed. Just to answer the question.

3 **MS. JOHNSON:** And Medi-Cal actually puts one out  
4 and I forgot I was going to bring it to show you as an  
5 example because it's periodically just put in the mail.

6 **CHAIR SAVAGE:** Okay, so the last issue on Access to  
7 Information is -- and I think this was Lenore -- was the  
8 issue of translation of documents. When would a translator  
9 translation of the forms, decisions or orders be available?

10 **MS. SILVERMAN:** Right. That's a concern certainly  
11 for those of us in large urban school districts. I know that  
12 it's -- the issue of translation is really critical. And I  
13 think that parents need to get documents quickly. If it's  
14 noted that they require translation and the other issue is  
15 translators. And the quality of translators that are  
16 assigned to come to hearings and mediation and we've had some  
17 real disappointments with the people who've been assigned in  
18 that they don't either use the correct dialect or they're  
19 just not competent with the type of terminology that's used  
20 in Special Education proceedings. And I think that that's a  
21 real issue for both school districts and, of course, for  
22 parents because we want to make sure that everything is being  
23 said correctly. So I think the timelines for getting  
24 documents translated as well as the provision of translators  
25 is a real key issue.

1           **CHAIR SAVAGE:** Do you have a recommendation we can  
2 talk about and get comment?

3           **MR. CORBIN:** Can we separate these out? I would  
4 suggest that first -- interpreters are one --

5           **CHAIR SAVAGE:** Okay. We don't have a lot -- we  
6 have two pretty --

7           **MS. SILVERMAN:** Oh, yeah. I don't know what the  
8 timelines are. I mean and I think that's the first one. I  
9 guess I'm looking for information as to what the timelines  
10 are for getting requests for hearings or mediations and that  
11 type of information to parents in their native language.

12           **MR. ROSENBAUM:** You're talking about the standard  
13 forms, Lenore?

14           **MS. SILVERMAN:** Standard forms.

15           **MR. ROSENBAUM:** Some of the -- and I haven't kept  
16 up with the website but I know this has been an issue over  
17 time just like the mediation only or some of the FAQ's. Is  
18 any of this in the major languages now online? Sorry. At  
19 least Spanish and Chinese.

20           **MS. SILVERMAN:** Yeah. Spanish, Chinese --

21           **JUDGE LABA:** (Inaudible)

22           **MR. ROSENBAUM:** Sorry.

23           **JUDGE LABA:** Currently all our standard forms are  
24 up on website in those five common languages.

25           **MR. ROSENBAUM:** Oh, they are? Okay. Great.

1           **JUDGE LABA:** But when somebody -- and the way we  
2 find out if somebody needs a translator or needing forms in  
3 another language is if they tell us. So if we get a  
4 complaint in Spanish -- that's a big -- then I request a  
5 translator. They're going to get it in English first. And  
6 depending on the language it's going -- it doesn't tell me  
7 how long it's going to take to get a translation of a  
8 document for them in another language.

9           **MS. SILVERMAN:** How does that affect the timelines?

10          **JUDGE LABA:** Well, because we provide in English  
11 right away we go forward on the timelines as usual --

12          **MS. SILVERMAN:** But is that fair?

13          **JUDGE LABA:** I don't know the answer to that. I'm  
14 just telling you what we do right now. Because it's 45 days.  
15 It doesn't say anything about what happens if it's in another  
16 language. It just says 45 days. But we get it to them as  
17 quickly as possible. Obviously if it's in a difficult  
18 language it's going to take us a little longer to find  
19 somebody that can translate that. But we do have the forms  
20 in the common languages. If we have a form -- let's say  
21 somebody needed it in Farsi, okay? And we translated it into  
22 Farsi for them. We still have that form and again all  
23 someone has to do is request it. We have a 'contact us'  
24 feature on the website and they can say 'I need forms in  
25 Farsi.' We'll send them the request for mediation or request

1 for hearing, whatever in that language. If we have it  
2 available.

3 **MR. ROSENBAUM:** So what would be the subsequent  
4 form? Sorry. In other words, you say from that initial one  
5 if it's in English and you don't know -- what would be the  
6 subsequent form?

7 **JUDGE LABA:** I thought Lenore was talking about  
8 things like the notice of due process hearing, scheduling  
9 order, things like that.

10 **MS. SILVERMAN:** Correct.

11 **MR. ROSENBAUM:** Oh, okay.

12 **MS. SILVERMAN:** Correct.

13 **JUDGE LABA:** And again, we send it first in English  
14 right away so there's no delay. And then they get it in  
15 Spanish or whatever the next language is as soon as we can  
16 get it translated. Again, the more common language is the  
17 more faster I can get it translated. For a common  
18 language -- Spanish is just a couple of days.

19 **MS. SILVERMAN:** Okay.

20 **JUDGE LABA:** The same thing with the decision.  
21 They're going to get it in English and then they'll get the  
22 Spanish version in just a couple days.

23 **MS. SILVERMAN:** Okay. And I think that was -- that  
24 was an interest of too, in terms of the decision. All right.  
25 Thank you.

1           **MR. CORBIN:** A pre-hearing conference order, for  
2 example.

3           **MR. ROSENBAUM:** Right.

4           **CHAIR SAVAGE:** Yeah. See I think that's  
5 concerning. Especially when you're --

6           **MR. ROSENBAUM:** Because of the timelines?

7           **CHAIR SAVAGE:** Because of the timeline so you get a  
8 pre-hearing conference order ten days before hearing but the  
9 family in Farsi doesn't get it until the day before hearing.  
10 How do they comply with that?

11           **MR. ROSENBAUM:** May I make a suggestion -- and I  
12 mean because my recollection is on the English language form  
13 it says 'do you need an interpreter?'

14           **MS. SILVERMAN:** Right.

15           **MR. ROSENBAUM:** But maybe the -- at least in the  
16 five languages on the English language form in that space  
17 that the five languages be there in those languages and bold  
18 in some way to say, you know, you may be filling this one out  
19 in English but you should right away indicate whether you  
20 need it in another language rather than saying in English 'do  
21 you need an interpreter?'

22           **CHAIR SAVAGE:** Right.

23           **MR. ROSENBAUM:** Put it in Hmong and Chinese and  
24 Tagalog and so forth.

25           **MS. SILVERMAN:** Okay, good. And then maybe even,

1 too, ask if there's a specific dialect because I know that  
2 that's been an issue. Especially --

3 **MR. ROSENBAUM:** That's the interpreter rather than  
4 written at least.

5 **MS. SILVERMAN:** Yes. Right. But I mean at least  
6 if we know they're going to require interpreter is there a  
7 dialect that --

8 **MR. CORBIN:** There should be a follow up on that  
9 issue --

10 **MS. SILVERMAN:** Right.

11 **MR. CORBIN:** -- for OAH to contact.

12 **MS. SILVERMAN:** Right. Because often times we've  
13 gotten an interpreter and the dialect is different and  
14 there's been a lot of missed information and --

15 **CHAIR SAVAGE:** So do we have -- I mean I think they  
16 need to be -- I think they need to be translated as soon as  
17 possible because I think it's unfair. They're not going to  
18 be able to understand what's going on until they get it in  
19 their language.

20 **MR. ROSENBAUM:** One thing to do on that - and this  
21 may be -- again because I know we don't have time today --  
22 would make -- we're loading a lot into January but we may  
23 need to come back on this. What could be done with some of  
24 the lesser -- I don't want to use the term obscure but the  
25 non-common second languages is that where you can't get a

1 translator right away a phone interpretation -- oral  
2 interpretation on some of the forms may be a quicker way to  
3 get that information so somebody could with Language Line,  
4 for instance, walk the complainant -- the litigant through --  
5 through a form orally --

6 **CHAIR SAVAGE:** Right.

7 **MR. ROSENBAUM:** -- which may be quicker than coming  
8 up with a translation. That would be a good sort of stopgap.

9 **MS. SILVERMAN:** I think that's a really good idea,  
10 Steve.

11 **CHAIR SAVAGE:** I would agree -- I would. So could  
12 we recommend that on non-common languages --

13 **MR. ROSENBAUM:** Yeah. The non-five languages.

14 **CHAIR SAVAGE:** -- the non-five languages, that when  
15 a request comes in prior to that order or whatever being put  
16 in -- translated -- that the -- a call is made by a  
17 translator --

18 **MR. ROSENBAUM:** Interpreter.

19 **CHAIR SAVAGE:** -- interpreter, sorry -- interpreter  
20 to discuss with that parent the information in the document  
21 that they have because they can't read --

22 **MR. ROSENBAUM:** Or at least give OAH that  
23 discretion to sort of -- you know, if the translation is  
24 going to take longer then use an interpreter to work -- to do  
25 whatever is appropriate in that situation to see that the

1 forms are made understandable. That's the thing. That the  
2 process and the forms are understood.

3 **CHAIR SAVAGE:** Yeah.

4 **MR. ROSENBAUM:** Probably could state that a better  
5 way but --

6 **CHAIR SAVAGE:** Yeah, so we need -- we need some way  
7 to get parents who need that information in their native  
8 language that's not a common -- one of the five common native  
9 languages -- as soon as possible.

10 **MR. ROSENBAUM:** Right.

11 **CHAIR SAVAGE:** And if that's done orally prior to a  
12 written --

13 **MR. ROSENBAUM:** Uh-huh.

14 **CHAIR SAVAGE:** Is that -- does that encompass --

15 **MR. ROSENBAUM:** I think so and then Lenore's idea,  
16 too, to indicate as early as possible where an interpreter  
17 will be needed in a dialect.

18 **CHAIR SAVAGE:** Okay.

19 **MS. SILVERMAN:** Right.

20 **MR. ROSENBAUM:** A Mandarin versus Cantonese for  
21 instance that could be --

22 **CHAIR SAVAGE:** Right.

23 **MR. ROSENBAUM:** -- clear otherwise.

24 **CHAIR SAVAGE:** Right. Right.

25 **MR. CORBIN:** You'd mentioned also as far as them

1 having the initial English complaint -- having actually in  
2 Spanish or any - I guess you could only do the five --

3 **MR. ROSENBAUM:** Right. Right.

4 **MR. CORBIN:** -- main languages. If they need  
5 something else actually stick that on the complaint.

6 **MR. ROSENBAUM:** Yes.

7 **CHAIR SAVAGE:** Okay.

8 **MR. ROSENBAUM:** Maybe at the top of it for that  
9 matter.

10 **MR. CORBIN:** Yes. Somewhere --

11 **MR. ROSENBAUM:** I think people may miss that. They  
12 fill it out in English because they see that --

13 **CHAIR SAVAGE:** Right. You need it --

14 **MR. ROSENBAUM:** -- and then it's later whereas they  
15 could from the get go indicate at least --

16 **CHAIR SAVAGE:** Okay, so I think I'm lost on the  
17 recommendation. I'm sorry.

18 **MS. SILVERMAN:** I know -- I was just sitting here.  
19 How do we frame the recommendation? Just that it's -- maybe  
20 at this point that as much information be provided as  
21 possible to allow parents to seek immediate assistance in the  
22 language of which they're most comfortable. I mean, I'm not  
23 sure we have -- we've covered several different topics.

24 **MR. ROSENBAUM:** Well, we probably want to be a  
25 little more precise.

1           **MS. SILVERMAN:** Right.

2           **MR. ROSENBAUM:** Capture some of these things.

3           **MS. SILVERMAN:** So we've got one, we had about the  
4 forms.

5           **MR. ROSENBAUM:** The form itself.

6           **MR. CORBIN:** Actually put in there the language --  
7 at least the five common languages.

8           **MR. ROSENBAUM:** Yes.

9           **MR. CORBIN:** 'I would like this in Spanish' on the  
10 English form.

11           **MS. SILVERMAN:** Right. Insert --

12           **MR. ROSENBAUM:** Prominently.

13           **MS. SILVERMAN:** -- what language you want the forms  
14 to be written in.

15           **MR. ROSENBAUM:** And need for an interpreter.

16           **MS. SILVERMAN:** Right.

17           **CHAIR SAVAGE:** And then the two -- second is OAH  
18 should make the process or any written order understandable  
19 or interpreted to a parent in their language -- in their  
20 native language --

21           **MR. ROSENBAUM:** If it's not one of these --

22           **CHAIR SAVAGE:** If it's not readily --

23           **MR. ROSENBAUM:** Right.

24           **CHAIR SAVAGE:** -- available in one of the five.

25           **MS. SILVERMAN:** Especially when there's a quick

1 timeline. And that's been our problem. When there's been an  
2 order like a pre-hearing conference order --

3 **CHAIR SAVAGE:** Right.

4 **CHAIR SAVAGE:** Or an order that goes out that  
5 requires a timeline and the parent isn't represented then  
6 we're really --

7 **MR. ROSENBAUM:** If I may, that's where you get --  
8 particularly with non-literate people in another language --  
9 someone on the phone in that language going over could be  
10 actually more useful than getting a nice translation three  
11 weeks later.

12 **MS. SILVERMAN:** Right.

13 **CHAIR SAVAGE:** Okay, so we have two  
14 recommendations.

15 **MS. SILVERMAN:** Okay. So the first one is for the  
16 forms that use with the five -- five common languages to  
17 insert on the actual forms 'do you need this form translated  
18 into one of those languages?'

19 **CHAIR SAVAGE:** All in favor? Unanimous. And now  
20 we're down to seven people.

21 **MS. SILVERMAN:** And then on the second one, was for  
22 OAH to make orders understandable in native language as soon  
23 as possible and that could be oral as well as written.

24 **CHAIR SAVAGE:** All in favor? Unanimous.

25 Okay, we are moving along. We have I think about

1 three large issues -- not large, but three remaining issues.  
2 One, the issue of an intersection between California  
3 Department of Education's compliance unit and OAH. One, the  
4 separation of mediators from Administrative Law Judges.  
5 Three is the progress or the status on the joint legislative  
6 audit. And then -- I don't know if this applies to us. It  
7 was in that Orange County question over staffing issues.

8 So I think I would like to start with the mediators  
9 and I think Judge Laba has asked if we start with the  
10 separation of mediators from Administrative Law Judges.

11 **MS. SILVERMAN:** Where was the issue about the  
12 compliance, though?

13 **CHAIR SAVAGE:** It is -- was on the original. It's  
14 not on the amended.

15 **MS. SILVERMAN:** Okay. It's an issue.

16 **MR. ROSENBAUM:** Roberta, just -- before we get to  
17 that I'm just concerned about capturing the discussion we had  
18 earlier about the data. For instance in hearings --  
19 unrepresented versus represented, prevailing on some versus  
20 on others -- I thought that would come under Item G. Can we  
21 in January, then -- as Judge Laba said she would prepare some  
22 kind of breakdown. Could we have those categories in fact --

23 **CHAIR SAVAGE:** Defined.

24 **MR. ROSENBAUM:** -- available by January.

25 **CHAIR SAVAGE:** Okay. We have an hour so if you

1 want to start your list and we can get to -- you know, we  
2 have 55 minutes left. So if you want to start making a list  
3 we will be sure to get to that.

4 **MR. ROSENBAUM:** Okay.

5 **CHAIR SAVAGE:** Yes. So just, you know, at quarter  
6 to four, say 'hey.' You've got to get that list.

7 **MR. ROSENBAUM:** Okay.

8 **CHAIR SAVAGE:** I brought a -- I know the issue has  
9 been brought up before. I raised the issue again of  
10 separating the mediators from the Administrative Law Judges.  
11 I personally preferred the prior system where we did not see  
12 the mediators as our judges.

13 I don't know if my preference is because I felt  
14 that the mediators that we had before as a core had at least  
15 from my experience, more skills in being a mediator and I  
16 don't feel that comfortable with the current system in every  
17 situation with the Administrative Law Judges I get who are  
18 acting as a mediator.

19 I recommend that we go back to a separate system.  
20 We have identified mediators. Problems I personally have  
21 with the current system is the skill set of the mediators in  
22 addition to the lack of access to the judges which we used to  
23 have access to the mediators outside of a particularly  
24 scheduled date to get things dealt with through a mediation,  
25 get a last language on a settlement agreement resolved. So I

1 much preferred it. I don't know if I am in the minority or  
2 in the majority but I think this is something that OAH has  
3 indicated they want to hear from us.

4           What do you -- what is -- do we have a  
5 recommendation? Do we not?

6           **MS. SILVERMAN:** Well, I've got to say that over the  
7 last couple of months since our last Advisory Committee  
8 meeting there have been changes. I've been getting calls  
9 from our mediators. I've been able to find who the mediator  
10 is online pretty quickly. They've been very responsive and  
11 actually tried to problem solve before the mediation takes  
12 place. I think that I've seen real changes since the  
13 Advisory Committee meeting.

14           Now on the other hand, there's some good ALJ's that  
15 are mediators and some are really, really bad. And, you  
16 know, I don't know how you address that. I think that that  
17 was the same issue, although I have to say for the most part,  
18 you know, with SEHO we were happy with the mediators but  
19 there were also some that we didn't feel were very -- very  
20 good. I would really like to have some way of just saying --  
21 I don't know if it's to Judge Laba or to someone else -- we  
22 just don't want this person assigned as a mediator any more  
23 because they're just not successful or effective when they  
24 come out. I mean -- and that's just the case.

25           But for the most part we've been happy and they

1 have been responsive lately in calling and I think that we've  
2 been getting fairly decent results -- pretty good results.

3 **CHAIR SAVAGE:** See I agree we've got -- okay, go  
4 ahead.

5 **MS. MCARTHUR:** I just have a question for you,  
6 Roberta.

7 **CHAIR SAVAGE:** Yeah.

8 **MS. MCARTHUR:** I want to preface my question with  
9 the fact that until about two months ago, I was of the  
10 opinion that there should be a complete separation. And  
11 without going into why I was of that opinion I have changed  
12 my mind.

13 What I want to know from you is, assuming that  
14 there is a statistical or factual variety of skill sets, if  
15 you will -- and in fact if there is a separation and that  
16 meaning that many of our colleagues who we highly respect  
17 could perhaps be just mediators -- which you know, I would  
18 certainly appreciate. At the same time there will be other  
19 people -- ALJ's who -- whom you have right now -- whose skill  
20 set you consider low.

21 **CHAIR SAVAGE:** Uh-huh.

22 **MS. MCARTHUR:** Assuming that there is a variance  
23 there, is there some reason why you as a parent's  
24 representative have an issue with -- is there an issue? Do  
25 you have an issue with the judge sitting in a mediation and

1 then hearing a different case that you might be involved in  
2 with different parents?

3 **CHAIR SAVAGE:** As a -- I mean there's no reason  
4 because I'm a students attorney that I have that opinion. My  
5 issues are I've had judges who are in the roll of mediator  
6 who have stated at the end of the day when they do nothing,  
7 'oh, that was great.' You know, they've sat there while the  
8 attorneys have negotiated. I --

9 **MS. MCARTHUR:** It's a skill set.

10 **CHAIR SAVAGE:** I think it's a skill -- to me it's a  
11 skill set and even though we're getting the calls in advance  
12 -- I get a call a day before. 'Is it still going? Is there  
13 anything I need to know?' And that's not the type of -- I  
14 just haven't had your experience.

15 **MS. SILVERMAN:** Well, but I agree with you that  
16 there's some mediators that just are people acting as  
17 mediators that are not effective. And they do sit back and  
18 at the end of the day -- yeah. So I mean there is that  
19 issue. And I think that that's more of an issue of weeding  
20 out the people who are not effective as mediators ---

21 **CHAIR SAVAGE:** Right.

22 **MS. SILVERMAN:** -- but also I -- I mean I think  
23 that they are calling. I am getting calls a few days before  
24 and really trying to use that as problem solving and then I  
25 want to say following up if we're not able to settle.

1           **CHAIR SAVAGE:** See I don't see that.

2           **MS. SILVERMAN:** That there's been really good  
3 follow up.

4           **CHAIR SAVAGE:** Okay. I want to just take comment.

5           **UNKNOWN FEMALE FROM AUDIENCE:** The -- there are - I  
6 agree there are some ALJ's who should never be in a  
7 mediation. They just cannot do it and if anything they make  
8 matters worse than helping. On the other hand, there are  
9 some ALJ's who are very good at it.

10           **MS. SILVERMAN:** Yes.

11           **UNKNOWN FEMALE FROM AUDIENCE:** But the thing that I  
12 have noticed is it's difficult when that ALJ is also hearing  
13 cases at the same time. I recently had a case where I was in  
14 negotiations on one case and I was before the hearing officer  
15 on another. They --

16           **MS. MCARTHUR:** Yes.

17           **UNKNOWN FEMALE FROM AUDIENCE:** -- the same ALJ on  
18 another case. And it -- what I was more afraid of is that it  
19 would -- if I was talking to the ALJ about the other case  
20 that it somehow would create an appearance of impropriety.  
21 Because we were having confidential discussions about another  
22 case we were trying to get resolved --

23           **CHAIR SAVAGE:** Right.

24           **UNKNOWN FEMALE FROM AUDIENCE:** -- immediately  
25 because we were headed to hearing the next week, you know,

1 and so it had to be done.

2 **CHAIR SAVAGE:** Right. And I've had that  
3 experience.

4 **UNKNOWN FEMALE FROM AUDIENCE:** That was my concern.

5 **CHAIR SAVAGE:** I've had mediations where the ALJ is  
6 days away from issuing a ruling in favor of the district and  
7 he's sitting there as our mediator. I don't think that's  
8 appropriate.

9 **UNKNOWN FEMALE FROM AUDIENCE:** Right. I can --

10 **CHAIR SAVAGE:** Because he's having confidential  
11 caucus with a party he's ruling -- making an issue -- you  
12 know, ordering a decision on in days. So --

13 **MS. MCARTHUR:** Two different cases, though.

14 **CHAIR SAVAGE:** Two different cases but same  
15 district so he's in a confidential communication with a party  
16 he's ruling on in a matter of days in another matter. I  
17 think that just has an appearance of impropriety.

18 **MS. SILVERMAN:** But you know I guess having worked  
19 for the courts before -- I mean, that's -- that happens all  
20 the time.

21 **CHAIR SAVAGE:** I think our community is smaller  
22 than a Superior Court community. That's the problem I have.

23 **MS. SILVERMAN:** But, you know, there was -- there  
24 was a suggestion -- I think it was made at the last Advisory  
25 Committee meeting -- perhaps having a group of ALJ's for six

1 months work as mediators and then having them flop and for  
2 six months having them work as ALJ's. And I think that that  
3 would eliminate --

4 **CHAIR SAVAGE:** That's interesting -- I didn't hear  
5 that.

6 **MS. SILVERMAN:** -- that problem and I know that  
7 that came up. Do you remember that?

8 **UNKNOWN FEMALE FROM AUDIENCE:** Yeah, I remember  
9 that comment well and I think that would work as long as you  
10 then exclude --

11 **MS. MCARTHUR:** Have enough (inaudible) --

12 **CHAIR SAVAGE:** Right. Because I've also had judges  
13 where I've had to exclude them. Yeah.

14 **MR. CORBIN:** To touch on that -- I do like the fact  
15 that --

16 **MS. BARDET:** You're holding on. It was --

17 **CHAIR SAVAGE:** Carl, I'm sorry. It was Susan's  
18 turn.

19 **MS. BARDET:** Carl, go ahead. Go ahead.

20 **MR. CORBIN:** Sorry, Susan.

21 **MS. BARDET:** Oh, all right. I'm also very  
22 uncomfortable with the situation we've been describing but I  
23 do think it's a different skill set. And I think that  
24 because we're in -- again, a different situation than State  
25 and Federal court litigation -- you know, the ultimate goal

1 is for parents and school districts to resolve cases and to  
2 have trust rebuilt. And I think it's very difficult when  
3 you're in a situation where the ALJ's are more trained and  
4 accustomed to hearing cases and deciding cases and you -- as  
5 I say, using different skill sets and often parents are very  
6 uncomfortable with things that go on in mediations these  
7 days. And I just think it would restore a lot of trust to  
8 the system if we had separately defined mediators and  
9 separately defined --

10 **MS. SILVERMAN:** I think we'd get rid of a lot of  
11 the problem.

12 **CHAIR SAVAGE:** Carl.

13 **MS. SILVERMAN:** And the --

14 **CHAIR SAVAGE:** Carl, go ahead.

15 **MR. CORBIN:** Okay. I really like the idea -- it  
16 does work. This model does work in many other realms of the  
17 law. I think it can work here. I personally like the fact  
18 that at the mediation we have someone who's not a mediator  
19 all the time and they may not -- I find it much more helpful  
20 to have somebody who has been in a position where they've  
21 been ruling on cases, making decisions who can come in  
22 there -- I think they're better able to guide the mediation  
23 process.

24 **MS. MCARTHUR:** I think so, too.

25 **MR. CORBIN:** I -- I personally think that's been

1 very successful. I do agree also that this may be a skill  
2 set issue that we're talking about that some ALJ's just don't  
3 make good mediators but again I think that's something that  
4 we can weed out. I also like Lenore's idea of a six -- or  
5 actually the idea you mentioned earlier -- the six month on,  
6 six month off. That might be the best of all worlds,  
7 frankly.

8 **CHAIR SAVAGE:** Eliza.

9 **MS. BARDET:** Go ahead.

10 **CHAIR SAVAGE:** Eliza?

11 **MS. MCARTHUR:** Is it all right, Susan, or do you  
12 want to follow up?

13 **MS. BARDET:** Yes, sure.

14 **MS. MCARTHUR:** You know, I used to think that if I  
15 were a parent and I were coming into a mediation or with --  
16 more importantly if I were a parent's attorney coming into a  
17 mediation where I might be sitting in front of this judge in  
18 a hearing that perhaps this judge based on whatever it is I  
19 do in mediation -- and we do different things in mediation  
20 than we do in hearings -- might have some opinions that may  
21 not bode well in a hearing and so on and so forth. And not  
22 only was that kind of, you know -- I came to the conclusion  
23 that it was a silly idea. But I really have found that the  
24 judges -- the deeper understanding that the judges get from  
25 being involved in the process that mediation is -- and it is

1 not just negotiating. It is much more than that. It is  
2 actually very helpful, I think, in hearings as well.

3 But for the last two months -- and this is the six  
4 month -- six on, six off kind a deal that you mentioned --  
5 I've been calling judges in mediation and saying, you know,  
6 what do you think? And I certainly have a question as to  
7 whether OAH -- I presume OAH is asking its judges as to what  
8 their view of this is. And I found without question that  
9 some judges would -- who are fabulous mediators and perhaps  
10 even fabulous hearing officers -- will not stay. They have  
11 to pick one loophole or the other. And I think that's an  
12 important consideration.

13 **CHAIR SAVAGE:** But if they -- oh, they would  
14 separate --

15 **MS. MCARTHUR:** Right. Whereas the on and off  
16 approach allows that variety that, you know, most normal  
17 people seek in their work.

18 **CHAIR SAVAGE:** I think the judges were --

19 **MS. BARDET:** Okay, I'm sorry. I wanted to just  
20 respond to something Carl said. Well, again we have to go  
21 back. If school districts are feeling very comfortable with  
22 having judges be the mediators we also have to remember that  
23 again by far the decisions are favoring school districts.  
24 And -- wait, let me just -- and that -- so that tends to --  
25 given just -- we will certainly be analyzing that but parents

1 are very much feeling that during mediation -- that there is  
2 something of a predisposition towards school districts'  
3 positions and a predisposition to saying very unfavorable  
4 things about parents' presentations -- initial  
5 presentations -- about what they're asking for.

6 I've had some really outrageous things said at  
7 mediations in front of the other -- in front of both sides  
8 and I've ended up settling the cases outside of mediation  
9 without that mediator. And I just think that it harmed the  
10 process much more than helped the process. And it's happened  
11 with different mediators.

12 **MS. SILVERMAN:** But this is how I --

13 **CHAIR SAVAGE:** Hold on. Hold on.

14 **MS. SILVERMAN:** I agree with you, Eliza. So -- I  
15 think it's a skill set but I've got to say that we still  
16 settle almost all of our cases. I mean, we still settle  
17 almost all of our cases and we've got to keep that in mind.  
18 I think part of the cases we would settle amongst each other  
19 whether there was a mediator there or not. And that  
20 facilitates the process. But we settle almost all of our  
21 cases and we've got to keep that in mind and what I find --  
22 you know, when we're caucusing and the mediator comes in and  
23 then something that the parent isn't hearing and says, you  
24 know what? You've got some real issues here. I think it's  
25 good for clients to hear. I think it's good for us to hear.

1 It can provide that -- but it's also, I think, a very helpful  
2 for the ALJ when they're really hearing the emotional issues  
3 on both sides. That they're more conscious of really what's  
4 going on in one of these cases. I think that it's so  
5 beneficial on so many levels and, yes, I think we need to  
6 have a process for removing the mediators who are not  
7 successful and also with the ALJ's. I mean there's got to be  
8 a way that we are able -- and I know we've got those forms --  
9 but sometimes that's not enough. And there maybe should be a  
10 mechanism for really being able to have a dialog -- maybe  
11 it's through this panel or another panel -- about saying,  
12 look, these people are just not effective.

13 **CHAIR SAVAGE:** Wait. I'm sorry, just --

14 **MS. JOHNSON:** She said forms.

15 **CHAIR SAVAGE:** After a mediation or a hearing you  
16 get a survey or a questionnaire about the quality --

17 **MS. JOHNSON:** Do parents receive the same thing?

18 **MS. SILVERMAN:** Oh, absolutely.

19 **CHAIR SAVAGE:** Okay, so --

20 **UNKNOWN FEMALE FROM AUDIENCE:** I as a parent,  
21 talking about looking at this as the difference between the  
22 nature of a mediation versus the due process hearing and to  
23 me I would say I absolutely would want to have different  
24 people being the mediator and the trial judge for the due  
25 process hearing -- I mean the hearing officer. And also it

1 just is the confidentiality of the mediation. You want to be  
2 free to talk about all kinds of stuff. And then if they --  
3 people are going to be the ALJ, you know, the hearing  
4 officer, it just --

5 **CHAIR SAVAGE:** No, different people.

6 **UNKNOWN FEMALE FROM AUDIENCE:** I know, but there  
7 are not enough of them, you know, the ALJ to be available,  
8 you know, to be wearing the mediator's hat on one day and  
9 then being the hearing officer on a different day. Just not  
10 enough number of them to go around. And that's why I'm  
11 suggesting we should perhaps look into hiring different set  
12 of people to do mediation and then different people to do the  
13 hearing.

14 **CHAIR SAVAGE:** See, and I agree with it but I think  
15 -- I will thank Eliza, I think it has to do with skill sets.  
16 Because there are a few judges -- I said for me it's an issue  
17 of skill sets. It's also accessibility outside of that one  
18 day. So I don't -- I've gotten those calls. I don't feel  
19 like that's helpful enough to me because the calls I've been  
20 getting are 'Miss Savage, are we going forward or is it  
21 cancelled?' And so I'm not getting -- we're not having much  
22 discussion if any about what's going to happen. So in  
23 addition to that, and I'll let you interrupt me in a minute,  
24 is after the fact. So we have a mediation. We have things  
25 that have to get followed up and when we had a set group of

1 mediators, we could call Ms. McClean or Ms. Talley and they  
2 would help us finalize the agreement if one party was  
3 delaying getting something finalized. The judges have 27  
4 other things --

5 I haven't had the experience where they help me.  
6 I've been turned down each and every time. So I don't have a  
7 positive experience with follow through or preventative or  
8 proactive things before. So my experience in the last three  
9 years has been I get that person one day and I take it or  
10 leave it, whatever I can get out of them, that's it.

11 **MS. MCARTHUR:** And I understand. If that has been  
12 your experience I think that's bad, for lack of a better  
13 term, okay? But several things. One is that, you know, it  
14 takes two to dance this deal and when a mediator calls and  
15 asks me 'are we going forward' the answer is yes and I can't  
16 stop talking, you know? They wait two weeks to hang up. So  
17 it takes that affirmative effort on our part, too, to do what  
18 it is we need of them to do.

19 **CHAIR SAVAGE:** Sure.

20 **MS. MCARTHUR:** You know, I also want to mention  
21 these are a few non sequiturs and I can't -- I lost the point  
22 of them, but I do want to say one thing. And maybe this was  
23 in response to what Susan was mentioning. I think we have to  
24 be very careful from the standpoint of our responsibility to  
25 everybody involved in this system. We should not be creating

1 a greater crevice. We should be bringing us together. And  
2 in try -- in talking or reinforcing the perception that there  
3 is a predisposition -- that's a very strong term that I  
4 believe you, Susan, used -- in reinforcing that sense I think  
5 we were doing a great disservice to the field and I mean  
6 particularly parents. Because, you know, institutions beat  
7 with several hearts -- it's easier to spread the pain. The  
8 parent, you know, there are two or maybe four, right?

9           So it's -- we have to be responsible about it and I  
10 think we -- we've said that, you know, we're going to get  
11 accurate information and I'm trying to set this on the right  
12 course. And I caution that we do that.

13           I also want to point out that in a number of  
14 mediations I've been in -- and I mediate day in and day out  
15 practically -- and quite frankly, find myself mediating in  
16 IEP's even when we're not in a mediation. I -- there are  
17 several instances where, for instance a director or a program  
18 specialist, would say something so horribly stupid that I'd  
19 be sitting there thinking oh, my God, this judge if, you  
20 know, this judge has to hear this case with this person as a  
21 witness. Her credibility is shot for good, you know? But  
22 it's good. It works both ways. It's good if parents are  
23 unreasonable and it's good if districts are unreasonable.  
24 It's good for people who are sitting on something as  
25 important as the due process hearings that affect somebody

1 said 'the lives of children' -- I hope that they're limited  
2 to FAPE but nonetheless I can see how that might seen in that  
3 light. It's important for them to understand what goes on in  
4 the process. And we can't have them in IEP's except --

5 **CHAIR SAVAGE:** Right.

6 **MS. MCARTHUR:** -- for those situations that we  
7 already discussed.

8 **CHAIR SAVAGE:** I think -- I think I join in Susan's  
9 concern. I have too many of -- and when you had asked me  
10 earlier about is it just that I'm a students attorney, I  
11 think I try to be objective in looking at --

12 **MS. MCARTHUR:** Yeah.

13 **CHAIR SAVAGE:** -- the mediators and I do think it  
14 is a skill set. I don't think they keep us at the table long  
15 enough. I think -- and that's their job.

16 **MS. MCARTHUR:** Uh-huh.

17 **CHAIR SAVAGE:** Is to keep us at the table talking  
18 long enough. I have enough clients coming to me afterwards,  
19 during the process, horrified. I mean horrified by things.  
20 And when I know I have a particular mediator I try to prepare  
21 my client enough and without fail parents are still  
22 horrified. And these are not parents who, you know -- these  
23 are parents who are attorneys. These are parents who are --  
24 who are used to being treated in their professional life --  
25 in their life as a parent, a mom, a dad -- with respect. And

1 they are not.

2 **MS. MCARTHUR:** Uh-huh.

3 **CHAIR SAVAGE:** And so it's bad when I have to  
4 counsel my clients in preparation for a mediation that, hey,  
5 at least this mediator will be respectful to you. And that's  
6 the -- that's why I think there needs to be a change.

7 **MS. MCARTHUR:** And so perhaps beyond -- last one, I  
8 swear.

9 **MS. BARDET:** Go ahead.

10 **CHAIR SAVAGE:** We still have 35 minutes.

11 **MS. MCARTHUR:** It goes beyond the six month on, six  
12 month off or separation recommendations or whatever it is  
13 that we wish to vote on in that respect. We need to be  
14 helpful to the hearing office and be specific. Those of you  
15 who have this experience -- I haven't, thank God. But those  
16 of you who have this experience to say what it is exactly  
17 that we see as problematic.

18 **CHAIR SAVAGE:** Yeah. Go into a little vetting  
19 process. So we have Dana -- I want to get --

20 **MS. JOHNSON:** Being far removed from this -- only  
21 doing just the one due process hearing and only observing a  
22 few others, what I keep hearing just from such -- how to be a  
23 good listener -- we need to weed out the poor mediators.  
24 You're filling out forms. This is not being clearly  
25 addressed. If it needs to be tabled for another time, what's

1 the holdup? Why is this a continuing, ongoing, problematic  
2 situation that just doesn't sound like it's being addressed  
3 at all. It seems like the forms are just going into a  
4 circular file or -- so --

5 **MS. SILVERMAN:** There are issues with the forms but  
6 I think that maybe a different vetting process or being able  
7 to say you know, got to rethink this person.

8 **CHAIR SAVAGE:** Well, and I think the issue --

9 **MS. JOHNSON:** Is there an anonymous line or  
10 something?

11 **CHAIR SAVAGE:** Susan. And then we're going to  
12 go --

13 **MS. BARDET:** I was just going to say I think it is  
14 difficult in a situation where if you have a problem with and  
15 ALJ mediator and you bring up a concern -- even if the office  
16 tries to maintain confidentiality which I'm sure I have every  
17 faith that -- you know, there's good faith attempts -- things  
18 happen. And then I would be appearing for a hearing in front  
19 of the judge that I said is a terrible mediator. I mean,  
20 that isn't good.

21 **CHAIR SAVAGE:** Hold on, can we go there and then  
22 come back to you or are you going to lose your train of  
23 thought?

24 **MR. ROSENBAUM:** I won't lose it.

25 **CHAIR SAVAGE:** Okay.

1           **UNKNOWN FEMALE FROM AUDIENCE:** I was just going to  
2 say that, you know, the other experience that I've had that I  
3 think needs to be really clear is that if an ALJ is serving  
4 in a mediator position they need to stay in that mediator  
5 position. And I had one experience where the ALJ ordered a  
6 young associate in our office to brief an issue for  
7 mediation. At the end of the mediation. And the other  
8 attorney did it. I told her not to do it. It was just -- I  
9 was just appalled that someone would be -- an ALJ in a  
10 mediator position would be ordering us to file a brief. I  
11 just didn't think that was acceptable.

12           **CHAIR SAVAGE:** Steve, I want to take your comment  
13 and then I think I want to summarize it.

14           **MR. ROSENBAUM:** To understand Susan's point, your  
15 concern -- the evaluations are anonymous. And my sense is  
16 that those are seriously taken and over time we will find  
17 that certain people will learn that they shouldn't be put in  
18 those positions and they won't be put in those positions as a  
19 mediator. But are you talking about instances where you have  
20 the sort of peremptory challenge at the outset -- no, I don't  
21 want this mediator?

22           **MS. BARDET:** Well, we're mostly talking about the  
23 feedback.

24           **MR. ROSENBAUM:** The feedback.

25           **MS. BARDET:** I'm also talking about the -- I'm

1 talking about the feedback because many times there have been  
2 very specific statements made that --

3 **MR. ROSENBAUM:** Oh, I see.

4 **MS. BARDET:** -- that were very, very concerning.

5 And if I disclose those statements there would be no question  
6 which mediation we're talking about.

7 **MR. ROSENBAUM:** I see.

8 **CHAIR SAVAGE:** Right.

9 **MS. BARDET:** So I have to say I have not been very  
10 open because of that fear.

11 **MS. SILVERMAN:** Well, with SEHO -- I mean there was  
12 a time when I just had to call and say can't use this person  
13 anymore. And they honored that. I think there needs to be a  
14 process and maybe just some kind of a different kind of a  
15 vetting process.

16 **UNKNOWN FEMALE FROM AUDIENCE:** I had a -- it sort  
17 of tags along with your concern, Lenore, but I had a process  
18 question because I'm wondering what information is available  
19 with respect to how the evaluations that are requested from  
20 the field for people spending time filling them out with some  
21 sincerity -- how that information is used or if it ever gets  
22 to the people who are being evaluated.

23 **CHAIR SAVAGE:** Right. So it's -- is that something  
24 we can get -- and then what I want to do is summarize what I  
25 think some of our recommendations may or may not be and then

1 we can move.

2           **JUDGE LABA:** Let make sure I understand the  
3 question.

4           **CHAIR SAVAGE:** The question is --

5           **JUDGE LABA:** You're talking about the (inaudible)  
6 forms that come after mediation.

7           **CHAIR SAVAGE:** Yes.

8           **JUDGE LABA:** Okay.

9           **CHAIR SAVAGE:** How are they used?

10           **JUDGE LABA:** We get all that information. If  
11 somebody happens to mention an ALJ by name -- good or bad,  
12 that comment is provided to their presiding judge who is  
13 their supervisor and that presiding judge will decide whether  
14 that -- you know, if it identifies a real serious problem  
15 they're going to address that problem. If it's a compliment  
16 hopefully they'll tell them you're doing a good job. We like  
17 to get both kinds of comments and we do get both kinds of  
18 comments. But in our quarterly reports you will see that the  
19 scores are always reported out as to the average grading that  
20 people are getting and we do look at those very, very  
21 carefully. We look at two things. One is the comments that  
22 are made. And the other is the scores. And we're going  
23 to -- we're tracking to see, are we staying on track? How  
24 can we improve in this particular area versus that particular  
25 area? At no time to we -- when we get one of these anonymous

1 forms -- if there's any way to identify what school district  
2 it came from or what parent it came from -- that information  
3 is redacted before it's ever provided to a judge. There's no  
4 way for them to know who said what. And occasionally a  
5 parent will sign it. You know? And so that is taken out.  
6 Like if they said 'Judge Smith was fantastic' or 'Judge Smith  
7 really needs to get a new job' -- whatever it might be we  
8 won't include that parent's name or the case number --  
9 sometimes they write that on there. So we --

10 **CHAIR SAVAGE:** Okay.

11 **JUDGE LABA:** It is -- that confidentiality is  
12 absolutely maintained. But we read every one of those  
13 comments. All of the PJ's read those comments on a regular  
14 basis. And we use it as -- to develop our training program  
15 as well.

16 **MS. SILVERMAN:** It's used to develop a training  
17 program but has there ever been any action if you get -- if  
18 you're getting consistently --

19 **MS. BARDET:** Multiple.

20 **MS. SILVERMAN:** -- negative comments? I've got to  
21 tell you I just haven't submitted a lot.

22 **MS. BARDET:** I do. I submit as much as I can. And  
23 I write on all --

24 **JUDGE LABA:** I can only say yes because again what  
25 happens with employees is personnel action and I cannot

1 comment on anybody individually but yes, they are taken  
2 seriously. Yes, they are considered at all times if we know  
3 who the judge is (inaudible).

4 **MS. BARDET:** Okay.

5 **JUDGE LABA:** But not the -- apart from the  
6 evaluations, I get calls. I get letters.

7 **MS. BARDET:** Okay.

8 **JUDGE LABA:** All the time.

9 **MS. BARDET:** Okay.

10 **JUDGE LABA:** You know? And I get things that  
11 say -- somebody said that -- don't send this mediator. We  
12 consider all that and I said at the last -- at the last  
13 Advisory meeting we want mediation to be successful for you  
14 and we want to be able to send somebody who is going to meet  
15 your needs for your individual mediation because again, the  
16 same skill set you're talking about -- one mediator might  
17 have a different skill set than another and you know the  
18 needs of what you need for a particular -- you know, we talk  
19 about facilitative versus evaluative -- you may have one this  
20 week that needs a real facilitative, hand-holding ALJ to be  
21 the mediator. But next week you may need somebody who's  
22 going to come in and say to your client 'you've got a problem  
23 and this is your problem.' And you know from experience who  
24 those people are. So --

25 **CHAIR SAVAGE:** Right.

1           **JUDGE LABA:** We try and adhere to that as often as  
2 possible.

3           **MS. BARDET:** That's good.

4           **CHAIR SAVAGE:** Okay. Just a couple quick comments  
5 and we're going to wrap it up.

6           **JUDGE LABA:** Can I conclude?

7           **MR. ROSENBAUM:** No, I have two questions.

8           **CHAIR SAVAGE:** Apparently you have two people who  
9 want to ask you questions.

10          **MR. ROSENBAUM:** So do you -- when these comments  
11 come in -- because maybe to take care of this identifying  
12 information -- do they come in on a sort of regular basis or  
13 on a rolling basis?

14          **JUDGE LABA:** They come in on a -- every day.

15          **MR. ROSENBAUM:** Yeah, but when do they get taken to  
16 the PJ or to the --

17          **JUDGE LABA:** When I get -- when the executive  
18 assistant gets them in.

19          **MR. ROSENBAUM:** Uh-huh.

20          **JUDGE LABA:** So they come into a personal cart from  
21 the staff -- the one direct staff person gets all of that.

22          **MR. ROSENBAUM:** Uh-huh.

23          **JUDGE LABA:** And when she gets a little bit of a  
24 stack then she goes through them and pulls out the ones that  
25 have a name on them --

1           **MR. ROSENBAUM:** Right.

2           **JUDGE LABA:** -- and any way to identify somebody --

3           **MR. ROSENBAUM:** Yeah.

4           **JUDGE LABA:** -- and then those are the ones that  
5 are sent off so I would say maybe once a month.

6           **MR. ROSENBAUM:** So there's some distance between  
7 the time of the mediation perhaps --

8           **JUDGE LABA:** And sometimes it could be even longer  
9 because if you hold an evaluation -- you know, say you had a  
10 mediation last month and --

11          **MR. ROSENBAUM:** That's true.

12          **JUDGE LABA:** Because I don't know when you  
13 evaluation was. I have no way of knowing.

14          **MR. ROSENBAUM:** It seems to me that as to the  
15 anonymity. And the other question -- so you would say there  
16 would be cases where you might then counsel someone, look,  
17 you're getting a lot of this kind of stuff. Maybe you  
18 shouldn't be on these or what can we do to help you improve?  
19 So theoretically, again without naming names -- that would be  
20 a practice you would consider. I mean that would be an  
21 option.

22          **JUDGE LABA:** Oh, certainly. And we're going to  
23 help improve everybody to be the best mediator and the best  
24 ALJ that they can be.

25          **MR. ROSENBAUM:** Yeah.

1           **JUDGE LABA:** Again, remember these are Civil  
2 Service employees.

3           **MR. ROSENBAUM:** Right.

4           **JUDGE LABA:** So unless somebody is a temporary  
5 employee on probation or something like that, it is not like  
6 at McGeorge where they could simply fire somebody.

7           **MR. ROSENBAUM:** Right. Well, I'm not talking fire  
8 but maybe say great, stay on as ALJ as a hearing officer but  
9 maybe, you know, mediation is not going to be your forte --  
10 because you're not going to go there. I don't know.

11           **JUDGE LABA:** And we haven't gotten to that point  
12 yet because again that's the sort of discussion you're having  
13 today.

14           **CHAIR SAVAGE:** Dana, quickly, and then --

15           **MS. JOHNSON:** On a previous agenda it came up about  
16 requesting mediators and I know I had mentioned I was really  
17 strongly opposed to that because as an unrepresented parent  
18 once again you're at the distinct disadvantage that the  
19 opposing attorney is familiar with who they may or may not  
20 want so they get to make that request. A parent would have  
21 no idea because they don't have the word of mouth. They  
22 don't have that connection so I think it's just completely  
23 unfair.

24           **JUDGE LABA:** Well, the only thing I'll say to that  
25 is that mediation is -- there are no decisions being made by

1 the ALJ in mediation. That's the only thing I would say to  
2 that, is they are strictly there to help facilitate a  
3 discussion and in no way make any rulings, decisions or  
4 anything else.

5 **MS. JOHNSON:** It's also intimidating, too, to find  
6 out that your -- the mediator you were expecting and suddenly  
7 the opposing counsel has requested for them to be drawn. I  
8 mean that -- that's an overwhelming situation to me.

9 **CHAIR SAVAGE:** Absolutely. And I think -- I mean  
10 there's only so much that we're going to be able to do with  
11 respect to unrepresented parents to make it more a tolerable  
12 process. Because it is. I mean attorneys have different  
13 information than parents. And all we can do -- I mean OAH --  
14 I think we --

15 **MS. JOHNSON:** But still it can't be ignored.  
16 That's all I guess. It can still be brought --

17 **CHAIR SAVAGE:** So the issues I think we have three  
18 separate things to talk about in terms of recommendations.  
19 My original recommendation is that we separate them and I'm  
20 sticking with my original recommendation whether you like it  
21 or not. You don't have to vote for it. I think, too, what I  
22 heard was a discussion about a skill -- looking at mediators  
23 and evaluating them on a skill set. And I'm not saying it  
24 articulately because it's getting to be 3:30. The third I  
25 think Lenore had talked about was a vetting process. And

1 maybe that fits with the skill set. And then the third would  
2 be the actual concrete suggestion of six months on, six  
3 months off. So those are our three proposals.

4 We'll start with number one -- the separation of  
5 the ALJ's from the mediators. And I am - there are three  
6 votes. And that makes it one, two, three, four.

7 So the next is do we -- do we recommend or do we  
8 propose in January a skill set or a vetting process for  
9 mediators?

10 **MS. BARDET:** That's what you wanted -- those are  
11 two different things.

12 **MS. MCARTHUR:** How about something simpler?

13 **CHAIR SAVAGE:** Okay.

14 **MS. MCARTHUR:** How about we propose to the OAH what  
15 it is we specifically have a problem with?

16 **CHAIR SAVAGE:** Okay.

17 **MS. MCARTHUR:** By January or December so that in  
18 January discussion takes place. You say what it is that you  
19 feel is a lacking skill set.

20 **CHAIR SAVAGE:** Okay.

21 **MS. MCARTHUR:** I mean from your experience. Let's  
22 say December 1.

23 **MR. ROSENBAUM:** I like the merging of those two  
24 concepts -- I mean I think what the request is, is to build  
25 on the discussion of today and find ways to ensure that of

1 these set of mediators available, that those who are best  
2 able and have the best results continue to be in that role  
3 and those who don't, not. So would there be some way to kind  
4 of ensure those who are most adept at being mediators to  
5 continue in that process? And that's based on some of the  
6 existing data that's already turned in from these anonymous  
7 evals. There might be the phone calls. It might be -- other  
8 kinds of ways and to fine tune that process. That's what I  
9 see by the vetting, I guess. And determining what does make  
10 a good skill set. Because we're dealing a finite set of --

11 **MS. SILVERMAN:** Well, I see three different things.  
12 I -- and I really agree with what you're saying and I agree  
13 with what Judge Laba was saying about different types of  
14 skill sets. There might be someone who's more of a hand-  
15 holding -- someone who's more evaluative, just like you can  
16 request in a court situation and then number three, someone  
17 who just shouldn't be working as a mediator. So I see  
18 several different things that are -- that could be  
19 delineated.

20 **CHAIR SAVAGE:** Do we have something to recommend or  
21 is this something that we as a Committee should put upon  
22 ourselves to bring back more information to OAH by the  
23 January meeting?

24 **MS. MCARTHUR:** I say the latter and --

25 **CHAIR SAVAGE:** Okay.

1           **MS. MCARTHUR:** -- to address Susan's concern of  
2 identification of her as the bad guy -- yeah, is that? That  
3 sums it up.

4           **CHAIR SAVAGE:** I don't think you're a bad guy.

5           **MS. MCARTHUR:** If we -- if we do it as a group all  
6 those things that Susan and others may have wanted to bring  
7 up but felt compelled to leave out of the forms can be  
8 brought to the attention of OAH so they can deal with the  
9 exact problem.

10          **CHAIR SAVAGE:** So then the third issue -- so that's  
11 something we will do.

12          **MS. MCARTHUR:** Yeah.

13          **CHAIR SAVAGE:** So the third is, does the Committee  
14 want to recommend that there by a six month on, six month off  
15 process? In favor? Three.

16          **MR. ROSENBAUM:** I'm abstaining on that. So I guess  
17 my vote goes with the majority.

18          **CHAIR SAVAGE:** So three in favor.

19          **MS. MCARTHUR:** One abstain.

20          **CHAIR SAVAGE:** One abstained. Three, three, one.

21          **MS. MCARTHUR:** You're making this complicated.

22          **MS. JOHNSON:** I'm abstaining, too.

23          **MS. MCARTHUR:** I mean I just think it's an idea --

24          **CHAIR SAVAGE:** Two abstaining. Okay, three, two,  
25 two. I mean I just think it's an idea that could be

1 explored.

2 **MR. ROSENBAUM:** I'm just -- I'm mixed on -- just to  
3 clarify this -- the second part -- I mean I think maybe we  
4 should be thinking but at the same time OAH can be thinking  
5 also how it can internally use the information it does get  
6 to --

7 **CHAIR SAVAGE:** Well, and I think -- I mean I think  
8 they have access to mediators. You know, people who have  
9 been mediators for years. Elaine Talley, Marian McClean,  
10 they're still there in a temporary -- I'm not exactly --

11 **JUDGE LABA:** Pro tem.

12 **CHAIR SAVAGE:** Yes. So they have access to people  
13 who whether we all like them or not have had substantial  
14 experience in mediation and could help identify a skill  
15 set --

16 **MR. ROSENBAUM:** Yes. Yes.

17 **CHAIR SAVAGE:** -- and evaluate mediators.

18 **MS. MCARTHUR:** Right. Absolutely.

19 **CHAIR SAVAGE:** So do we want to make a  
20 recommendation with respect to that or do we want to just  
21 have OAH do an internal -- do we want to have specific --  
22 Eliza?

23 **MS. MCARTHUR:** I think starting with if we all like  
24 them very much. I think it's a great recommendation. These  
25 people are highly respected by most of the bar as far as I

1 can tell and could be very helpful.

2 **CHAIR SAVAGE:** So would you -- the recommendation  
3 be that OAH work with Marian McClean and Elaine Talley on  
4 identifying skill sets and identifying mediators that could  
5 be appropriate --

6 **MS. MCARTHUR:** That would be wonderful.

7 **MS. SILVERMAN:** Just work with whoever they feel  
8 they need to work with and -- would you identify specific  
9 people?

10 **CHAIR SAVAGE:** I'm comfortable identifying Elaine  
11 and Marian.

12 **MS. MCARTHUR:** I mean I don't know that everybody  
13 knows these particular mediators -- I do so I'm comfortable.

14 **CHAIR SAVAGE:** Right. Well, I think we can do it  
15 twofold. I think we can have the specific recommendation for  
16 those of us who know Elaine and Marian and to identify them  
17 and then a broader recommendation that they work with -- you  
18 know, career mediators --

19 **MS. MCARTHUR:** Right.

20 **CHAIR SAVAGE:** Larry Norton (phonetic) comes to  
21 mind.

22 **MS. MCARTHUR:** Right.

23 **CHAIR SAVAGE:** And (inaudible).

24 **MS. MCARTHUR:** Right. And this is just a  
25 recommendation. I mean OAH --

1           **CHAIR SAVAGE:** Right.

2           **MS. MCARTHUR:** -- can say we'll work with somebody  
3 else but those of us who happen to know --

4           **CHAIR SAVAGE:** Right.

5           **MS. MCARTHUR:** -- these mediators and their  
6 background and their knowledge --

7           **CHAIR SAVAGE:** Okay.

8           **MS. MCARTHUR:** -- I mean I can already pair up  
9 Elaine with a number of ALJ's --

10          **CHAIR SAVAGE:** Right.

11          **MS. MCARTHUR:** -- for whom she would be an  
12 excellent source.

13          **CHAIR SAVAGE:** Right. Okay. So let's make that  
14 on --

15          **MS. MCARTHUR:** Or you.

16          **MS. SILVERMAN:** I just said OAH would work with  
17 known Special Education mediators to identify skill sets?

18          **CHAIR SAVAGE:** I'm going to say the two that I  
19 know. So I am willing to make the recommendation that it be  
20 Elaine and Marian and I -- no one has to support me, so -- we  
21 can do it, too. Known mediators and then specific  
22 recommendations. So let's start with OAH will work --

23          **MS. SILVERMAN:** -- will work with knowns -- I mean  
24 I would do both. I mean I think that they're both good but I  
25 think if they're not willing to do those two then --

1           **CHAIR SAVAGE:** Well, that's a different --

2           **MR. ROSENBAUM:** What are the two options now?

3           **CHAIR SAVAGE:** The two recommendations are first,  
4 OAH will work with known mediators to --

5           **MS. SILVERMAN:** -- known Special Education  
6 mediators to identify skill sets.

7           **CHAIR SAVAGE:** Okay, all in favor? I'm in favor of  
8 that. Okay.

9           And then separate and apart is that OAH will work  
10 with specifically Elaine Talley and Marian McClean to  
11 identify skill sets and I think the part that we didn't add  
12 on the first one is identify skill sets and looking at the  
13 mediators that currently exist. I think it's the same group.

14           Okay, so it's unanimous with both.

15           **MR. ROSENBAUM:** Can I just -- just --

16           **CHAIR SAVAGE:** Quickly because we're past our  
17 comment time.

18           **MR. ROSENBAUM:** I hope --

19           **CHAIR SAVAGE:** Okay.

20           **MR. ROSENBAUM:** I hope what we're doing -- I hope  
21 what we're doing is not coming up with like of nice little  
22 textbook lists, but we're looking realistically --

23           **CHAIR SAVAGE:** Right.

24           **MR. ROSENBAUM:** Because we can all say this is what  
25 makes a good mediator.

1           **CHAIR SAVAGE:** Right.

2           **MR. ROSENBAUM:** What we're looking at is the pool  
3 of people who are doing it now --

4           **CHAIR SAVAGE:** Right.

5           **MR. ROSENBAUM:** -- to ensure that the good ones  
6 stay in. I mean, again, quote unquote --

7           **CHAIR SAVAGE:** Yeah.

8           **MR. ROSENBAUM:** -- and you know -- okay, is that --

9           **CHAIR SAVAGE:** Yeah. I don't care who it is as  
10 long as they're --

11           **MS. BARDET:** That's exactly right.

12           **MS. MCARTHUR:** And you know I'm thinking of it in a  
13 broader term than just Miss Talley and Miss McClean coming in  
14 and saying here's what makes a great mediator --

15           **CHAIR SAVAGE:** Right.

16           **MS. MCARTHUR:** -- and giving a workshop. I mean  
17 observation of mediators, seeing what works for certain  
18 people, what works for others --

19           **CHAIR SAVAGE:** Yeah.

20           **MS. MCARTHUR:** -- those are the nuances that should  
21 be considered.

22           **MR. ROSENBAUM:** Right.

23           **CHAIR SAVAGE:** Okay, so you have comments?

24           **JUDGE LABA:** You have public comments.

25           **CHAIR SAVAGE:** Okay.

1           **JUDGE LABA:** I just didn't want to miss them.

2           **CHAIR SAVAGE:** Okay, so I just want to quickly talk  
3 about the issue of the intersection of CDE and OAH. Yes.  
4 You want to do the public comment?

5           **JUDGE LABA:** If you don't mind because people have  
6 taken the time to write these.

7           I need to read a couple because they're really,  
8 really long.

9           **CHAIR SAVAGE:** Oh, okay.

10          **JUDGE LABA:** And we only have 15 minutes left,  
11 so --

12          **CHAIR SAVAGE:** Okay.

13          **JUDGE LABA:** So --

14          **MR. CORBIN:** 20 by our clock.

15          **MR. ROSENBAUM:** 17.

16          **CHAIR SAVAGE:** Okay. Sorry.

17          **JUDGE LABA:** I have to find them. So the first one  
18 that came in this morning -- and again some of these may not  
19 be things that you can comment on but they took the time to  
20 write them. It says "What does the OAH plan to (inaudible)  
21 semantic words games and tricks that school districts staff  
22 use at IEP's solely to avoid legally having to select  
23 children with the support services they need to be in school.  
24 And example would be my school district's complete refusal to  
25 use the term --"

1                   **UNKNOWN MALE:** Microphone, please.

2                   **JUDGE LABA:** -- "one to one paraprofessional aide.  
3 Instead they tried to use individualized adult present or  
4 designate an individualized adult or additional designated  
5 individualized adult or specific additional designated  
6 individual adult. When my son first transitioned to  
7 kindergarten" -- it has the name of the school district. I'm  
8 going to leave that out. "the content specialist wanted to  
9 write we will always have an adult present in my son's IEP to  
10 describe his paraprofessional support. Always have an adult  
11 present -- I should hope so. He was in kindergarten.  
12 Shouldn't all kindergarteners always have an adult present?  
13 Always have an adult present could mean 600 kids on the  
14 playground and one adult and my son. This is a systemic  
15 problem happening to almost all parents of children with  
16 disabilities. The word play during IEP meetings may seem  
17 like some fun game to the district administrators but they  
18 are not funny to parents. It is hard enough for parents who  
19 are adept at English to contend with this but when all this  
20 nonsense is being translated into Spanish or Chinese for  
21 parents who do not speak English, it is nearly impossible to  
22 follow. They do not understand the nuances of the language  
23 being used and therefore the IEP's they get for their  
24 children are not as followed as they should be. The only  
25 reason for going to such great lengths to not use a term 'one

1 to one paraprofessional aide' is to trick parents into  
2 agreeing to wording that will always ensure that the district  
3 is never found to be out of compliance for lack of providing  
4 the paraprofessional support parents think their children are  
5 supposed to be getting and that is unethical. When they  
6 write 'designated adult' and no aide is supplied the district  
7 claims that the general education teacher was in fact the  
8 designated adult. How can the general education teacher with  
9 no other adult present in the classroom be considered  
10 supplemental support? Supplemental means in addition to. It  
11 means to increase, to add something, to be a supplement to  
12 something, doesn't it? This is a plea for the CDE and also  
13 the OAH judges to look beyond the tricky wording and semantic  
14 games and instead focus on the spirit of what was supposed to  
15 be in the IEP. If the IEP calls for a full time designated  
16 adult under supplementary supports that means the children  
17 require -- the child requires an additional adult be present  
18 to help him. Full time, of course, means all day at school."

19 I wanted to make sure I read that for you. And I  
20 have one more.

21 **CHAIR SAVAGE:** Well, I think -- I think I can  
22 understand a parent's concern about the wording of an IEP. I  
23 think if we are able to get ALJ's to IEP's that may help them  
24 understand the process more so that if a case goes to hearing  
25 -- I don't know there's much -- this is my own thought. I

1 don't know there's much OAH can do to address what a district  
2 is or is not doing and unfortunately the cumbersome legal  
3 process that parents get put through is the process for  
4 addressing that. I -- it's a horrible situation, absolutely.

5 **MS. MCARTHUR:** But I think this email goes beyond  
6 that. A plea to OAH to recognize trickery from  
7 forthrightness. And I don't think anybody would disagree  
8 that that is paramount in analyzing any set of facts.

9 **CHAIR SAVAGE:** Right.

10 **MS. MCARTHUR:** And obviously there are all kinds of  
11 issues of appropriate notice to the parent if the parent  
12 doesn't know that IEP is saying or giving the child.

13 **CHAIR SAVAGE:** Issues of consent.

14 **MS. MCARTHUR:** Yeah.

15 **JUDGE LABA:** Two more. The first - this is an easy  
16 one. "Since the South did not vote on any issue" -- meaning  
17 the South Advisory Committee -- "what is the meaning of a  
18 vote by the North panel?" I just want to assure those of the  
19 Southern California Advisory Panel that all of -- because  
20 we're not meeting together this time -- that all of the  
21 considerations that I got in the notes are going to be mixed  
22 together with all the considerations that this panel is  
23 putting forward and we'll be able to take recommendations  
24 from -- it's one joint recommendation, it's not --

25 **CHAIR SAVAGE:** I think we should say our votes only

1 count. All in favor?

2 **MR. ROSENBAUM:** Are they weighted? Do our votes  
3 count 50 per cent?

4 **CHAIR SAVAGE:** I think that that's a good question  
5 as to what these votes mean and we are just an advisory panel  
6 so it's just a recommendation that we made.

7 **JUDGE LABA:** Right. It's a recommendation to OAH  
8 and we're not bound by anything that's recommended. So.

9 The last comment I have I will give you these two  
10 to read after. The last one which is fairly long is "I have  
11 been instructed to pick up my son at 11:30 from grade K  
12 because he has meltdowns. He was adopted at three weeks and  
13 has FAS and six points of autism. School is over at 2:00  
14 p.m. The district won't qualify him for services because  
15 they say he has a behavior problem and not an educational  
16 problem. But yet he is not getting any -- getting an  
17 education like everyone else. Any suggestions?"

18 **MS. MCARTHUR:** Yeah. Roberta or Susan take the  
19 case. I think that's an easy one.

20 **CHAIR SAVAGE:** It's your district. I recognize the  
21 city.

22 **MS. MCARTHUR:** No way. It is not.

23 **CHAIR SAVAGE:** I think it's --

24 **MS. MCARTHUR:** It's a substantive issue that we  
25 cannot address here.

1           **CHAIR SAVAGE:** Right. But I -- you know, I think  
2 that free and low cost list --

3           **MS. MCARTHUR:** Yes.

4           **CHAIR SAVAGE:** Update it.

5           **MS. JOHNSON:** Also the Advisory Committee list if  
6 someone wanted to address anyone on the Advisory Committee.  
7 I think that should be put out to the public as well because  
8 they might not know that there is something on the website.

9           **CHAIR SAVAGE:** Sure. Absolutely.

10          **MS. JOHNSON:** Since we do have nametags out if they  
11 wanted to address somebody directly.

12          **CHAIR SAVAGE:** There were a couple of comments on  
13 the topics we were talking about earlier, looking at "Is  
14 there no committee in existence that oversees OAH decisions  
15 and rulings and looks at the data? Seems that charts showing  
16 cases, how the cases were ruled and in whose favor would be a  
17 standard thing to do to keep track of trends." If they had  
18 something we were talking about -- this has some more  
19 specific information, targeting chart format but I think the  
20 question is -- we look at the quarterly reports and some of  
21 us believe maybe it's not as accurate. So I don't know. How  
22 the cases were ruled -- they are good things to be looking  
23 at.

24                   Okay, and the last one: "How can IEP's be  
25 appropriate when school districts mostly are not assessing

1 children in all areas of suspected disability? I agree  
2 absolutely about innate unfairness of the system. Parents  
3 are fighting Goliath and the OAH rules in school districts  
4 favor 95 per cent of the time and you folks are talking about  
5 color coded labels."

6           Unfortunately, absolutely. And I think, you know,  
7 I think -- I'm not going to apologize for talking about  
8 color-coded labels. I think it is a tough system. I think  
9 we have a lot of hurdles. I don't think anyone's going to  
10 solve it today or tomorrow but I think we have to figure out  
11 ways that we can make it workable -- as workable for parents  
12 as it is for students attorneys as it is for districts  
13 attorneys and yeah, there are very substantive issues but  
14 there's also basic procedural issues. I don't know if anyone  
15 else has a comment on it.

16           We didn't agree on the color coded labels. That's  
17 all I'll say. And, you know, I can be the insulting panel  
18 member today.

19           **MR. ROSENBAUM:** I abstained from the vote on  
20 labels.

21           **MS. MCARTHUR:** But it turned out to be a divisive  
22 topic.

23           **CHAIR SAVAGE:** Right. So I -- absolutely. It's  
24 unfair but I think there are basic things to make it a little  
25 easier. Okay so we have ten minutes left. Is there anything

1 in the public -- in the audience that we haven't commented  
2 upon? We do have one issue that we might be able to address  
3 quick -- not quickly but at least start the discussion.

4 **MS. MCARTHUR:** Judge Laba has another web comment.

5 **CHAIR SAVAGE:** Okay. Web comment: "Would you at  
6 the end of this meeting please read what decisions were made  
7 today, what decisions will be made in January?"

8 I think the difficulty in doing that is we've had  
9 two note takers. We've been having them identify the  
10 recommendations and my guess is what would happen is we will  
11 generate those, submit them to the Committee to make sure  
12 they're accurate to the best of our recollection, get them to  
13 OAH and they can be posted on the web. I don't think we're  
14 going to have the ability to get those today. And then I  
15 assume OAH has a time frame for when we have to get an agenda  
16 out for the January meeting and we will be complying with  
17 that.

18 **MS. BARDET:** Do you want to share the January date  
19 real quick?

20 **MR. ROSENBAUM:** Yes, could we --

21 **CHAIR SAVAGE:** I don't think we have a January  
22 date.

23 **JUDGE LABA:** The Southern California meeting made a  
24 couple of proposals. (inaudible)

25 **CHAIR SAVAGE:** Where are the notes of Southern --

1           **MR. CORBIN:** I don't see those.

2           **MS. BARDET:** I didn't see them.

3           **MS. SILVERMAN:** No.

4           **CHAIR SAVAGE:** There isn't anything in it.

5           **JUDGE LABA:** I asked Southern California to give us  
6 three dates.

7           **CHAIR SAVAGE:** Okay.

8           **JUDGE LABA:** Proposed dates were January 12<sup>th</sup>, 23<sup>rd</sup>,  
9 or 26<sup>th</sup>. Are those Mondays or Fridays? Does anybody have a  
10 calendar?

11           **MS. BARDET:** The 12<sup>th</sup> is a Monday.

12           **MS. SILVERMAN:** 12, 24 and 26?

13           **JUDGE LABA:** 12, 23 and 26.

14           **MR. CORBIN:** January 12 is a Monday, the 23<sup>rd</sup> is a  
15 Friday and the 26<sup>th</sup> is a Monday.

16           **CHAIR SAVAGE:** The 23<sup>rd</sup> we're in hearing, Eliza.

17           **MR. ROSENBAUM:** That's not -- none of those are  
18 Martin Luther King.

19           **JUDGE LABA:** I think we determined Martin Luther  
20 King was --

21           **CHAIR SAVAGE:** Martin Luther's the 19<sup>th</sup>.

22           **MR. CORBIN:** The 19<sup>th</sup> is Martin Luther.

23           **MR. ROSENBAUM:** Okay.

24           **JUDGE LABA:** Okay, so those are the three days  
25 proposed by Southern California.

1           **MR. ROSENBAUM:** We're looking for a joint --

2           **JUDGE LABA:** We're looking for a joint meeting  
3 date.

4           **MS. SILVERMAN:** 26<sup>th</sup>?

5           **MS. BARDET:** I can't do the 12<sup>th</sup>.

6           **JUDGE LABA:** I just asked you if any of those three  
7 dates can work for everybody.

8           **CHAIR SAVAGE:** 26<sup>th</sup>.

9           **JUDGE LABA:** Figure that out and if not we'll have  
10 to go back for more proposals.

11           **MS. SILVERMAN:** The 26<sup>th</sup> of --

12           **CHAIR SAVAGE:** Dana?

13           **MS. JOHNSON:** I think that the 12<sup>th</sup> may be out, I'm  
14 not sure, for Ripen Unified in San Joaquin County. Many of  
15 the schools are out.

16           **CHAIR SAVAGE:** Okay. So we're looking at the 26<sup>th</sup>.

17           **MS. JOHNSON:** 26<sup>th</sup>? That would be great.

18           **CHAIR SAVAGE:** Eliza, the 26<sup>th</sup>?

19           **MR. CORBIN:** 26<sup>th</sup>.

20           **CHAIR SAVAGE:** Susan?

21           **MS. BARDET:** Yes.

22           **CHAIR SAVAGE:** Okay, so pending --

23           **MR. CORBIN:** The other --

24           **CHAIR SAVAGE:** -- the other two people who have  
25 left we'd be looking at the 26<sup>th</sup>?

1           **MS. MCARTHUR:** What happened to the 23<sup>rd</sup>?  
2           **CHAIR SAVAGE:** We're in hearing for me, too.  
3           **MS. MCARTHUR:** Oh, then it's a bad day.  
4           **MR. ROSENBAUM:** Are you sure you're in that one?  
5           **MS. JOHNSON:** You can get a continuance. That's  
6 all.  
7           **CHAIR SAVAGE:** Yeah, I scheduled it with her  
8 office.  
9           **MS. JOHNSON:** Good cause for you right there.  
10          **MR. CORBIN:** And the 12<sup>th</sup> was an option then also.  
11          **CHAIR SAVAGE:** I think Dana has some conflict.  
12          **MS. JOHNSON:** I think the 12<sup>th</sup> is possibly the Ripen  
13 Unified is out of school for that.  
14          **MR. CORBIN:** Okay.  
15          **MS. JOHNSON:** But with that --  
16          **MS. SILVERMAN:** Quite a bit of San Joaquin.  
17          **MR. ROSENBAUM:** I see what's going on.  
18          **JUDGE LABA:** Let me just tell you what our goal is  
19 for the next meeting. Again, I have to rely on my trusty  
20 techies over here with all the beautiful cameras and things.  
21 Our goal would be -- and this is just how I have been told it  
22 would be envisioned. There are some technical difficulties  
23 with this plan but I have plenty of time to work on it with  
24 the techies. The goal would be that you are in a room with a  
25 video monitor so that you see Southern California, they see

1 you -- so in essence you two are video-conferencing. And  
2 then we will webcast the video conference out to the people.  
3 Now given the fact that with the webcast we found decreased  
4 personal attendance -- we have a lot of attendance on the  
5 website but as you can see, our normal attendance is actually  
6 here in the room. So our hope would be that we could hold it  
7 maybe at an OAH facility. We have rooms big enough in Los  
8 Angeles, Sacramento --

9 **MR. ROSENBAUM:** Oh, so it may not be in the Bay  
10 area. Maybe Sacramento you're saying?

11 **JUDGE LABA:** Technically we would go back to Bay  
12 area but I don't know because they're going to have to tell  
13 me what room has the best technical ability to do this.

14 **MR. ROSENBAUM:** Okay.

15 **JUDGE LABA:** But we will be looking first in OAH  
16 facility with a conference room long enough -- large enough  
17 to get all of this equipment in and that has a video-  
18 conference capability. So that is the goal so that you all  
19 can have a big discussion rather than two separate  
20 discussions.

21 **MR. ROSENBAUM:** Do we know how many attended today  
22 on the web?

23 **JUDGE LABA:** Do we have a recent -- last I heard it  
24 was about 35.

25 **UNKNOWN MALE:** Yeah, it's been averaging that.

1           **JUDGE LABA:** And in Southern California we averaged  
2 around 70.

3           **CHAIR SAVAGE:** Wow.

4           **JUDGE LABA:** So again, and we only had about a  
5 week's notice of the webcast because we got it together at  
6 the last moment. So pass the word out. Our goal is to  
7 webcast all of these so pass the word out that that's a good  
8 way for people to attend.

9           **MR. ROSENBAUM:** Without identifying commentors, do  
10 we know of those comments that we received today how many  
11 were repeat? We don't know that.

12           **JUDGE LABA:** I can tell if someone chose to put  
13 their name in.

14           **MR. ROSENBAUM:** Oh, okay.

15           **JUDGE LABA:** Again, I can't give you names of who  
16 was sending it but I can tell of the comments if somebody had  
17 typed their name in. I know that they are a repeat person.  
18 But it is designed to be anonymous --

19           **MR. ROSENBAUM:** Anonymous.

20           **JUDGE LABA:** In case somebody would like to be  
21 anonymous.

22           **CHAIR SAVAGE:** Okay. And -- I'm sorry. Before we  
23 go I want to apologize to the person on the webcast who  
24 talked about the labels. I apologize for laughing. I wasn't  
25 laughing at the question and I think we understand the issue,

1 it's just it's late in the day and I'm tired and I -- I don't  
2 want them to be insulted by our treatment of their issue.

3 **JUDGE LABA:** And to the person who wrote the last  
4 question about refreshing -- please know that no decisions  
5 have been made today.

6 **CHAIR SAVAGE:** Right.

7 **JUDGE LABA:** Either recommendations are being  
8 submitted to OAH and part of the process of getting ready for  
9 January where we will be putting an agenda together of all  
10 the things that have been tabled, etc. So for those of you  
11 who are not here today keep an eye on the website. You'll  
12 see the new agenda come up. If there's a topic you'd like to  
13 include that maybe didn't come up, contact a committee  
14 member, put it on the agenda and that's how we got the agenda  
15 together before. We'll do the same process again. Marian,  
16 did you have --

17 **MARIAN (FEMALE FROM AUDIENCE):** I have a process  
18 question with respect to it's the job of these committees to  
19 make recommendations to OAH. What is the obligation of OAH  
20 to provide any response?

21 **CHAIR SAVAGE:** Good one.

22 **JUDGE LABA:** Really good question and I realize  
23 today I don't know the answer. Because all the contract says  
24 is we have to take your --

25 **MR. ROSENBAUM:** Into consideration.

1           **JUDGE LABA:** -- into consideration. And obviously  
2 if we're going to do something, we're going to tell you.  
3 Great idea, we're going to do that. I mean obviously but I  
4 don't know what kind of response that OAH is obligated to  
5 give you and, you know, an explanation I think if we decide  
6 not to do something. I am -- I have that on my to-do list to  
7 go back and find out from my office how we're going to  
8 approach those items that we are either not accepting or  
9 accepting only in part, something like that. So I don't know  
10 if it will be a written response. I don't know if it'll just  
11 be a discussion that we had. I don't know the answer to  
12 that.

13           **CHAIR SAVAGE:** Okay. And Lenore and I were just  
14 discussing that the one issue we didn't get to is the issue  
15 of the -- the CDE.

16           **MS. SILVERMAN:** It's the most important one to me.

17           **CHAIR SAVAGE:** It's a huge issue.

18           **MS. SILVERMAN:** Huge issue.

19           **JUDGE LABA:** Well, and as I was mentioning to  
20 Roberta prior to the meeting, the issue of the intersect  
21 between CDE and OAH -- I think the way you guys are raising  
22 it is a little different than Southern California was raising  
23 it. So it may be something we could discuss within the  
24 context of this committee. But the one thing to remember  
25 about this committee is this is the OAH Advisory Committee

1 and so whether or not CDE compliance department is doing  
2 their job or whether it's a problem, etc., would be something  
3 you would need to address to CDE. They come to our meetings  
4 but they come here because this is the OAH Advisory  
5 Committee. But there are certain things that do affect us  
6 and they are -- they affect both things and --

7 **MS. BARDET:** Who's here from CDE?

8 **JUDGE LABA:** We have three people here from CDE.  
9 And so they come to all our meetings. Our contract monitors  
10 are here. So --

11 **MS. BARDET:** The Compliance Department needs some  
12 serious oversight. Okay. Enough said.

13 **MR. ROSENBAUM:** Is that the response? Are you  
14 modeling the response that we will get from the agency?

15 **MS. JOHNSON:** Is it possible then since this was  
16 tabled once last Wednesday --

17 **CHAIR SAVAGE:** To put it on our top --

18 **MS. JOHNSON:** To put it at the top.

19 **CHAIR SAVAGE:** Absolutely.

20 **MS. JOHNSON:** We've been waiting two weeks.

21 **CHAIR SAVAGE:** I think that we can agree that at  
22 our January meeting that the --

23 We're going to close a few minutes early unless  
24 someone has a comment to make. Thank you.

25 **JUDGE LABA:** I just want to say thank you to

1 everybody who participated. Your input and your time is  
2 really appreciated. So we haven't decided on a time for the  
3 next meeting. I think all days are a bit strong for  
4 everybody. But let's see what the agenda looks like. We  
5 adjusted this meeting for the purpose of the long agenda.  
6 But let's see what we come up with and go from there.

7 **CHAIR SAVAGE:** Is it going to be here or in --

8 **JUDGE LABA:** Logistically it's going to depend on  
9 what my tech people tell me I can do. Okay? Thank you all  
10 for your time and thank you to everyone on the webcast for  
11 participating and your comments.

12 (Thereupon, the meeting  
13 was adjourned.)

14 --oOo--

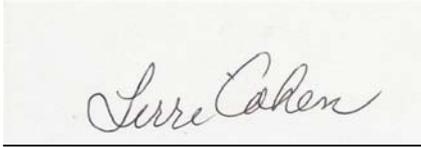
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## CERTIFICATE OF TRANSCRIPT

This is to certify that I, Terri Cohen, transcribed the digitally recorded public meeting of the Special Education Advisory Committee dated October 22, 2008; that the pages numbered 1 through 243 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  
December 24, 2008  
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