

1 TRANSCRIPTION OF RECORDED MEETING
2 OF
3 OFFICE OF ADMINISTRATIVE HEARINGS
4 SPECIAL EDUCATION ADVISORY COMMITTEE
5 April 22, 2016
6 Sacramento & Van Nuys, California

6 Members Present: Northern California

7 Presiding Judge Robert Varma, Facilitator

8 F. Richard Ruderman

9 Colleen Villarreal

10 Karen Mates

11 Cindy Chandler

12 Natalie Cooper

13 Mindy Fattig

14 Valerie Mulhollen

15 Marie Alejandra León

16 Southern California

17 Presiding Judge Peter Paul Castillo, Facilitator

18 Paula West-Hernandez

19 Melissa Hatch

20 Elias R. Economou

21 Margaret Adams

22 David German

23 Blanca Zambrano

24 Douglas Siembieda

25 Transcribed by: Charlene Waters

Foothill Transcription Company

May 6, 2016

Elk Grove, California

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1 Committee in areas such as revisions to OAH's website,
2 forms, documents, scheduling procedures, staff training,
3 and outreach to families and students. We have 13
4 members out of 17 total, so a quorum is -- we do have a
5 quorum. The first thing I'd like to do is do a
6 selection of chair in each location. Previously, what
7 we have done if there are no objections is that the
8 division presiding judge in Sacramento, which is myself,
9 chair this part of the meeting, and then Presiding Judge
10 Castillo would chair the Southern California part of the
11 meeting. Is that acceptable to everyone?

12 **COMMITTEE MEMBERS:** Yes.

13 **PRESIDING JUDGE VARMA:** Thank you. Then we also have a
14 note-taker in each location. The way the process works
15 is that we usually have one of our ALJ's be the note-
16 taker in Southern California and one in Northern
17 California, unless one of the committee members wishes
18 to be the note-taker. The purpose of the note-taker is
19 that in the end I will get a copy of the notes that they
20 have taken so that I can prepare a summary for the
21 Committee of the meeting, which we have a copy of from
22 the last meeting there for everyone. We've also posted
23 it on our website and sent it to the committee members.
24 So we would suggest that one of our ALJ's in each
25 location be the note-taker unless somebody wants to be

1 the note-taker in Sacramento. No? Okay. Southern
2 California?

3 **PRESIDING JUDGE CASTILLO:** No takers here.

4 **PRESIDING JUDGE VARMA:** In Southern California,
5 Administrative Law Judge Alexia Hohensee will be the
6 note-taker, and in Northern California, Administrative
7 Law Judge Cheryl Carlson will be the note-taker. Next,
8 we should do introductions of the Committee members, go
9 by the name and the affiliation. I'll start with
10 myself. My name is Bob Varma. I'm the Division
11 Presiding Judge, and then we'll start with -- Deputy
12 Director Melissa Crowell is here. She's not officially
13 a member of the Committee. She's part of OAH. We'll
14 start with Ms. Mulhollen.

15 **MS. MULHOLLEN:** My name is Valerie Mulhollen, and I was
16 formerly a special ed teacher, and I now represent
17 parents and children for special education matters.

18 **MS. FATTIG:** My name's Mindy Fattig. I'm the SELPA
19 Director for Humboldt Del Norte, and I'm also a parent
20 of two children with special needs.

21 **MS. CHANDLER:** I'm Cindy Chandler. I have a 28-year-old
22 special needs, and I continue to help other parents
23 through the system.

24 **MS. COOPER:** Natalie Cooper. I have an eight-year-old
25 in the system, and I try to help other parents as well.

1 **MS. VILLARREAL:** Colleen Villarreal with Lozano Smith.
2 We represent school districts.

3 **MS. LEÓN:** Alejandra León. I represent school districts
4 as well with Fagen, Friedman and Fulfrost.

5 **MR. RUDERMAN:** Rick Ruderman, attorney representing
6 parents and children.

7 **PRESIDING JUDGE VARMA:** And in Northern California, is
8 that Ms. Mates' card?

9 **FEMALE MEETING MEMBER:** Yes.

10 **PRESIDING JUDGE VARMA:** Ms. Mates was not able to
11 attend, and Ms. Beall will not be here. She actually
12 resigned earlier this week, so I'll discuss that more
13 when I discuss the upcoming application process.

14 Southern California, can we have introductions?

15 **PRESIDING JUDGE CASTILLO:** Presiding Administrative Law
16 Judge Peter Paul Castillo from OAH, and we'll start off
17 on my right.

18 **MS. ADAMS:** Sure. Margaret Adams. I'm an attorney
19 representing parents.

20 **MS. ZAMBRANO:** Blanca Zambrano, parent.

21 **MS. WEST-HERNANDEZ:** Paula West-Hernandez, Team of
22 Advocates for Special Kids and parent.

23 **MR. GERMAN:** David German, parent attorney.

24 **MS. HATCH:** Melissa Hatch, school district attorney.

25 **MR. SIEMBIEDA:** Doug Siembieda, Director of Special

1 Education for Huntington Beach Union High School
2 District and a parent of a child with special needs.

3 **PRESIDING JUDGE VARMA:** Okay.

4 **PRESIDING JUDGE CASTILLO:** And that's the committee
5 members here.

6 **PRESIDING JUDGE VARMA:** Okay. As we go through and as
7 each member speaks in each location on agenda items,
8 it'll be great if we can remember to say our names so
9 that we -- because we can't see each other very well in
10 each location, so that would be very helpful. Also
11 present on behalf of OAH here in Sacramento are
12 Presiding Judge Margaret Broussard and Administrative
13 Law Judge Cheryl Carlson. Do we have any OAH staff in
14 Van Nuys, Judge Castillo?

15 **PRESIDING JUDGE CASTILLO:** Yes, we have our note-taker,
16 Judge Hohensee, and then Judges Bogy and Judges Levine.

17 **PRESIDING JUDGE VARMA:** Great. So we want to express
18 our appreciation to all of the members and your interest
19 in assisting OAH with improving special education
20 dispute resolution and process and procedures. OAH and
21 the community I believe benefit from your input and
22 discussions. It's an important forum for exchange of
23 information and ideas. There are some expectations to
24 the members that we usually go over, which is to fully
25 benefit from the experience that each member has to

1 offer, we look forward to your full participation. We
2 understand that your time is valuable and scarce. Some
3 of you have driven in the rain in Northern California
4 today. Some fly out of California to Oregon and then
5 fly back in California because of the location --

6 **FEMALE COMMITTEE MEMBER:** Yep.

7 **PRESIDING JUDGE VARMA:** -- that they're in to get here.
8 If you're unable to attend, please let us know as soon
9 as possible. Fail to attend two meetings, you may be
10 removed from the Committee. They do not have to be
11 consecutive meetings. Those are pretty much the
12 expectations. In the fall meetings, we usually go over
13 the big (inaudible) opening meeting, but this is the
14 second meeting of the fiscal year. We will not go over
15 that. We only do it once a year. The way the meeting
16 proceeds is that I have taken the agenda items the
17 Committee has sent to me, and I've put them in the
18 agenda that's been posted online and been sent to all
19 the members. I'll present each item and discussion by
20 the Committee. The member who proposed the item shall
21 discuss it and make recommendations, and the
22 recommendations have to be seconded. We vote in both
23 Northern and Southern California. We'll ask for names
24 and a yes or no vote and those abstaining so that we
25 have a full record of who voted which way. We don't

1 follow the Roberts Rules of Order, but we do need to
2 make sure that the discussion is orderly, and then
3 public comment about each agenda item are read after the
4 Committee has finished. Sometimes a public comment on
5 an item comes in after we have moved on to some other
6 agenda item, in which case I will hold it and read it at
7 the end. This is the Spring Meeting --

8 **PRESIDING JUDGE CASTILLO:** Judge Varma?

9 **PRESIDING JUDGE VARMA:** Yes.

10 **PRESIDING JUDGE CASTILLO:** We have one more Committee
11 member. Maybe you want to introduce yourself and you
12 can get set.

13 **MR. ECONOMOU:** Eli Economou, student side attorney.
14 Sorry I'm late.

15 **PRESIDING JUDGE VARMA:** That's okay. Good morning, Mr.
16 Economou.

17 **MR. ECONOMOU:** Good morning.

18 **PRESIDING JUDGE VARMA:** So in the spring what happens
19 usually is the members serve two-year terms and in the
20 spring is usually the last meeting for the members that
21 have been on the Committee for two years. There are
22 going to be a lot of openings this spring. I just want
23 to go over the members, and if I get it wrong, contact
24 me later and let me know, but this is the first year for
25 (inaudible) term in Northern California for Ms. Léon,

1 for Ms. Chandler, and Ms. Cooper. This is actually the
2 first meeting for both Ms. Chandler and Ms. Cooper, so
3 thank you for being here. This is the first year in
4 Southern California for Mr. Siembieda and that means
5 that everybody else -- and Ms. Beall, this was also her
6 first year for a new two-year term, but she resigned, so
7 she is -- that position is also empty. My understanding
8 is in Northern California the folks ending their terms
9 after this meeting are Ms. Fattig, Ms. Mates, Mr.
10 Ruderman, Ms. Villarreal, Ms. Mulhollen, and in Southern
11 California Ricky Alyassi, David German, Melissa Hatch,
12 Paula West-Hernandez, Sara Young, Blanca Zambrano, Elias
13 Economou, and Margaret Adams. That's what my records
14 show. If I am wrong, please contact me. We have
15 already posted on the website the application and the
16 application process. The applications were also sent to
17 you. If you wish to reapply, please do so. We will
18 accept applications until June 17th. Last year what
19 happened was for the part of California where we had a
20 lot of openings, very few people applied. For the part
21 of California where we had one opening, a lot of people
22 applied. So hopefully people will spread out their
23 applications across the state. Next is staff changes at
24 OAH. Every meeting we have some staff changes we
25 announce. Lori Crom, who was a Staff Service Analyst,

1 has taken the Associate Government Program Analyst
2 position, the AGPA position. This position for special
3 education works closely with the division PJ to monitor
4 and the elimination of the special education program
5 under the contract with CDE. Noe Fajardo, who is a case
6 manager, has been promoted to Staff Service Analyst, and
7 he's still a case manager. He will now just have more
8 complicated cases that he will manage. There are two
9 current open case manager positions in OAH that we are
10 looking to fill and that is due to case managers Dana
11 Dill and Lucilla Brembula (phonetic) taking other
12 positions within OAH. OAH has also hired several new
13 ALJ's. In Southern California, we have Mark Levine and
14 Vernon Bogy. If they could introduce themselves.

15 **MR. LEVINE:** Should I come around here?

16 **PRESIDING JUDGE CASTILLO:** Yeah, why don't you come
17 around.

18 **MR. LEVINE:** Good morning. I'm Mark Levine. I'm new
19 here with the agency, a few months now. I came in from
20 California Unemployment Appeals Board where I was an ALJ
21 for the last six years and --

22 **PRESIDING JUDGE VARMA:** Thank you.

23 **MR. LEVINE:** -- it's a pleasure to be here.

24 **MR. BOGY:** Good morning everybody. I'm Vernon Bogy.

25 Like Mark, I am a new OAH special ed judge. Like Mark,

1 I was at COIB as an ALJ for the last seven years. Nice
2 to see you.

3 **PRESIDING JUDGE VARMA:** Thank you. And in Northern
4 California we have ALJ Cheryl Carlson, who is our new
5 ALJ here.

6 **MS. CARLSON:** Hi. I'm Cheryl Carlson also from COIB
7 where I was for seven years.

8 **PRESIDING JUDGE VARMA:** Great. Thank you. Those are
9 all the items before we get into the hearing and
10 mediation process items, and these are usually the items
11 that get the most discussion. The first item is the
12 update on the revising the guide to Understanding
13 Special Education Due Process Hearings. It has been
14 revised and it is on the website. It was sent out for
15 translation into the five most common languages. The
16 translations are due back next week, so those will be
17 updated on the website as well. I recall from the last
18 meeting that we had that there was a public comment.
19 There was a concern that by reducing the -- lowering the
20 readability so that it's more understandable that we may
21 take out important information. I want to assure the
22 community I have read the guide thoroughly. It has all
23 the important information. I think it is more readable,
24 more user friendly now. It took us a little while to
25 get the project done because we had to -- we were also

1 updating forms, and we had to do the links and all that
2 and put that in the guide. I think that it's great if
3 attorneys, parents, school district folks, they all read
4 the guide frequently. We get questions to staff that
5 all of the information is in the guide. So hopefully
6 this will be a more user friendly and a better guide for
7 everyone to use. Can you --

8 **MS. CHANDLER:** Okay. I'm sorry.

9 **PRESIDING JUDGE VARMA:** Yes.

10 **MS. CHANDLER:** Is it okay to --

11 **PRESIDING JUDGE VARMA:** I was going to ask any questions
12 or comments.

13 **MS. CHANDLER:** -- oh, okay. Sorry.

14 **PRESIDING JUDGE VARMA:** Go ahead. Ms. Coop -- Ms.
15 Chandler

16 **MS. CHANDLER:** (Inaudible).

17 **PRESIDING JUDGE VARMA:** Sorry.

18 **MS. CHANDLER:** In the minutes, it said it was going to
19 be a 40-page document. Did --

20 **PRESIDING JUDGE VARMA:** It ended up being longer than
21 that. We could not keep it to 40 pages. It ended up
22 being slightly longer. That's the document itself and
23 then when you add all the forms, because we have sample
24 forms and information behind it and sample scheduling
25 orders, I think it works out to about 70, 80 pages, but

1 the main content that gives you the information on how
2 to go through everything step by step has been reduced
3 significantly.

4 **MS. CHANDLER:** And my other question would be is since
5 most cases are settled, I understand it's like 99
6 percent or so, is there a lot (inaudible) in there on
7 settlement and what to look for, you know, kind of a
8 guide for parents?

9 **PRESIDING JUDGE VARMA:** Yes. It describes the mediation
10 process and what to expect at mediation and how to
11 handle the mediation. It talks about settlement. It
12 talks about settlement resolution session. It talks
13 about settlement and mediation. It talks about
14 settlement afterwards. It doesn't give you a guide as
15 to what you should do in the settlement agreement.
16 That's a legal issue that we don't -- we can't provide
17 information on. In each case it's different, but --

18 **MS. CHANDLER:** Okay.

19 **PRESIDING JUDGE VARMA:** -- it does describe the process,
20 yes.

21 **MS. CHANDLER:** Because that would be the part that I
22 would want it --

23 **PRESIDING JUDGE VARMA:** Yes.

24 **MS. CHANDLER:** -- in there.

25 **PRESIDING JUDGE VARMA:** Yes, and at each step,

1 mediation, prehearing conference, and hearing it tells
2 you what to expect and how to prepare, as well as for
3 mediation only cases.

4 **MS. CHANDLER:** But not what to do with your settlement
5 once you get it?

6 **PRESIDING JUDGE VARMA:** Right.

7 **MS. CHANDLER:** Okay.

8 **PRESIDING JUDGE VARMA:** That's the legal advice that we
9 try to stay away from.

10 **MS. CHANDLER:** Okay. Thank you.

11 **PRESIDING JUDGE VARMA:** Any other questions or comments
12 on --

13 **PRESIDING JUDGE CASTILLO:** Yeah, we have a question here
14 from Ms. Zambrano.

15 **MS. ZAMBRANO:** Yes. I was just wondering if in the
16 future we'll be considered to have videos posted on the
17 website regarding these questions, because some families
18 are -- may not be able to read in English or different
19 languages or like they're visual learners and reading
20 and listening and watching a video would that be
21 possible?

22 **PRESIDING JUDGE VARMA:** There is on the website. There
23 is a video that kind of shows what a proceeding is like,
24 what a hearing is like, and it does give some
25 information. It's introductory information. If a

1 committee member would like to make a recommendation,
2 you can certainly make a recommendation.

3 **MS. ZAMBRANO:** I guess regarding this new document --
4 updated document have a video related to that.

5 **PRESIDING JUDGE CASTILLO:** Okay. So we have a request
6 here I guess that a video related to the new document be
7 created.

8 **PRESIDING JUDGE VARMA:** So if I can phrase your
9 recommendation, your recommendation is that OAH create a
10 video related to the guide to Understanding Special
11 Education Due Process Hearings for the website?

12 **MS. ZAMBRANO:** Yes.

13 **PRESIDING JUDGE VARMA:** Okay.

14 **MS. ZAMBRANO:** Yes.

15 **MS. COOPER:** Can I ask a clarifying question about that?
16 Are you wanting it just available auditorily? Or I'm
17 not sure what a video would look like except for it
18 someone was reading the -- like sitting there reading
19 the document. Is that what you have in mind?

20 **PRESIDING JUDGE VARMA:** And that was Ms. Cooper.

21 **MS. COOPER:** Oh, sorry.

22 **PRESIDING JUDGE VARMA:** That's okay.

23 **MS. ZAMBRANO:** I guess someone actually reading the
24 document.

25 **FEMALE COMMITTEE MEMBER:** Maybe a Power Point?

1 **MS. ZAMBRANO:** Like a Power Point or someone -- there
2 was a reason -- I'm just going to give you a picture.
3 The IHHS, the California Department of Health and
4 Department, they posted a video about the IHHS process,
5 so there was two presenters. One was describing the
6 main changes and the other one was explaining the
7 process, and that was very, very helpful, and it was --
8 they had it in English and Spanish and then they were
9 going to -- and I think Vietnamese.

10 **PRESIDING JUDGE VARMA:** Okay.

11 **MS. ZAMBRANO:** And it was a combination of the two
12 presenters and a Power Point.

13 **PRESIDING JUDGE VARMA:** Okay. Any other comments or
14 questions? Ms. Zambrano, did you want to revise your
15 recommendation, make it more specific based on the
16 discussion?

17 **PRESIDING JUDGE CASTILLO:** Ms. Zambrano?

18 **FEMALE COMMITTEE MEMBER:** (Inaudible).

19 **MS. ZAMBRANO:** Oh.

20 **PRESIDING JUDGE CASTILLO:** One second.

21 **FEMALE COMMITTEE MEMBER:** Presentation.

22 **MS. ZAMBRANO:** Okay. Thank you. A presentation and
23 Power Point.

24 **PRESIDING JUDGE VARMA:** Okay. So you would like OAH to
25 make a video that has a presentation and a Power Point

1 with respect to the guide to Understanding Special
2 Education Due Process Hearings?

3 **MS. ZAMBRANO:** Yes.

4 **PRESIDING JUDGE VARMA:** Is there a second?

5 **MS. ADAMS:** Second.

6 **MR. GERMAN:** Second.

7 **PRESIDING JUDGE CASTILLO:** You have a second from Mr.
8 German and Ms. Adams.

9 **PRESIDING JUDGE VARMA:** Okay. So we'll take a vote.
10 All in favor in Northern California please raise your
11 hands. It unanimous in Northern California. All in
12 favor -- and Judge Castillo can you take a vote down
13 there?

14 **PRESIDING JUDGE CASTILLO:** All in favor in Southern
15 California. Unanimous in Southern California.

16 **PRESIDING JUDGE VARMA:** OAH will consider the
17 recommendation and we will respond to that. Any other
18 questions, comments on this agenda item? Okay. Great.
19 Next item is OAH scheduling causing conflicts for school
20 districts. This was Mr. Siembieda's item.

21 **MR. SIEMBIEDA:** Yes.

22 **PRESIDING JUDGE VARMA:** So I will let him address it.

23 **MR. SIEMBIEDA:** All right. Thank you. And I don't know
24 that I have a motion right off the bat, but I just have
25 something I'd like to take into consideration is that

1 the scheduling changes that are being made are having
2 pretty significant impacts on the operations of school
3 districts, and I'm going to use an example that I think
4 might help the understanding. We have hearings
5 scheduled. We're in hearing on a Thursday. We're
6 scheduled for Monday and Tuesday the following week and
7 on Thursday afternoon at 3:00 we're told no, that's
8 changing. It's going to be Wednesday, Thursday, Friday
9 the following week now. And while it may seem like
10 that's a simple change, it really isn't in regards to
11 the operations of a school district. We have limited
12 facilities that need to be ADA compliant in order to
13 hold a hearing, and so it seems like there's an
14 expectation or a belief that there's unlimited
15 facilities to be able to be used or the facilities that
16 we're using are open again the next week, and many times
17 what it does is it interferes and disrupts professional
18 development that's going on or planned within the
19 district or other types of district operation meetings
20 that are occurring. And it seems like there's that in
21 conjunction with significant amount of extra time being
22 added to hearings, so it changes the number of days that
23 we're in hearings for. So when you show up for an
24 expected five-day hearing and we're told on day 1 well,
25 no, that's going to now be 10 days, that really changes

1 what we're trying to accomplish from the district, and I
2 think it doesn't take into consideration the financial
3 implications to districts on sub costs and all the other
4 costs that would go along with running a hearing twice
5 as long as we've been expected or making immediate and
6 abrupt changes to all the schedules throughout the
7 district. So I don't know that there's a motion in
8 there anywhere. I think it needs -- it's something that
9 OAH needs to really take into consideration as best as
10 you can when making schedule changes is that the
11 facilities are pretty limited within districts to be
12 able to run hearings, and they're often used for many
13 other purposes by the staff. And so the way I've been
14 seeing this go on in our area lately it has been quite
15 disruptive to the operations of the school districts
16 themselves. So if it's something that -- I don't know.
17 Like I said when I started, I don't know that there's a
18 motion in there anywhere. I think it's more for
19 awareness of OAH of what that causes for school
20 districts when we're trying to manage the facilities for
21 the hearing process and continue to manage running our
22 school districts while we're working through the hearing
23 itself.

24 **PRESIDING JUDGE VARMA:** Thank you. Mr. Ruderman has a
25 hand up.

1 **MR. RUDERMAN:** I know in the old days SEHO used to on a
2 rare occasion, but occasionally, rent out a conference
3 room from a nearby hotel, which is I think reasonably
4 placed and can have hearings. I recall doing at least
5 one of those myself when I was a hearing officer in
6 those days in a hotel.

7 **PRESIDING JUDGE VARMA:** Did everybody hear Mr. Ruderman?

8 **FEMALE COMMITTEE MEMBER:** Yes.

9 **MALE COMMITTEE MEMBER:** Yes.

10 **PRESIDING JUDGE VARMA:** Okay.

11 **MS. FATTIG:** And, your Honor, if I can tag onto that in
12 regards to location hearing, some of our school
13 districts are one school districts, and to find a
14 location that not only meets the ADA requirement, but
15 has a six to eight foot tables and can be locked and
16 secured and not used for other community activities that
17 night has put a tremendous hardship on our small school
18 districts in particularly. We offer the county office
19 of education, but the parents at times it's pretty far
20 to travel to the county office of ed in our rural areas.
21 So getting back on what Rick was saying as far as the
22 pressure on these small school districts, OAH in my
23 understanding has said well, find a hotel room or find
24 something that you could rent, and that's been a
25 tremendous hardship not only for physical location, but

1 for monetary location for monetary means. So again,
2 there's not a motion there. It's just what we're seeing
3 out there and tagging onto what Doug was saying
4 regarding keeping the facilities locked and not being
5 able to use them when our schools are really community
6 centers.

7 **MR. RUDERMAN:** I would just point out -- this is Rick
8 Ruderman. I think SEHO used to pay for it and not the
9 districts when they had to rent a hotel room, so people
10 could impact that in their budgets however they want to
11 work it out. I don't think it's going to be a high
12 item, but just saying.

13 **MS. FATTIG:** For us potentially -- this is Mindy Fattig.
14 For us it potentially could be if the nearest hotel is a
15 two-hour drive away from the district.

16 **PRESIDING JUDGE CASTILLO:** Ms. Hatch, yes.

17 **MS. HATCH:** I would just add that -- and also when we
18 have these scheduling changes, you know, it puts a
19 tremendous burden on the district's witnesses. You
20 know, we have teachers and school psychologists and that
21 type of thing, and it impacts the children that they
22 serve. So when we have folks that have to bounce back
23 and forth or travel to testify, you know, that's another
24 impact on the district, and sometimes it feels like
25 there's limited consideration for the district having to

1 kind of go through these last minute, you know, changes
2 to make it happen, and it's true. Sometimes you can't
3 find a hotel that meets OAH's requirements, and a lot of
4 times the school districts have to turn to their counsel
5 and then spend money on me having to look for a hotel
6 that --

7 **MS. FATTIG:** Right.

8 **MS. HATCH:** -- might meet OAH's requirements. So it's -
9 - I know it's kind of rare for those little districts,
10 but it can be kind of difficult at times.

11 **PRESIDING JUDGE CASTILLO:** And we have question. Ms. --

12 **MS. WEST-HERNANDEZ:** No, I want to make a comment. This
13 is Paula West-Hernandez. And I also think from the
14 parent perspective, it is difficult because they're
15 dealing with childcare issues, rescheduling work, those
16 types of issues.

17 **PRESIDING JUDGE VARMA:** Ms. Cooper.

18 **MS. COOPER:** I was just going to say the same thing. As
19 parents for our side, we're paying for specialty
20 witnesses. We don't have the luxury of using the school
21 staff that's -- we're already relying on another
22 professional to take a day off of -- and have cleared
23 their schedule. And also, would it be possible that
24 it's part of a school district's plan to have a backup
25 plan for or a backup location identified to hold

1 meetings that do have to be rescheduled?

2 **MS. LEÓN:** I think that's part of the problem though --
3 this is Alejandra León -- that when school districts
4 have such limited facilities, it's pretty hard to go --
5 we have no Plan B.

6 **MS. COOPER:** Uh-huh.

7 **MS. LEÓN:** Plan B is, you know, just making
8 rearrangements of everyone's schedule, and it has been
9 done. It ends up getting done, but it's through a lot,
10 a lot of rearranging and effort. So I think it should
11 be pointed out that the school districts are making a
12 deep, deep, deep -- I mean we understand, you know,
13 districts want to be compliant with ADA, with the
14 requirements of hearing, of preserving the integrity of
15 what's going on in that hearing room, the privacy of
16 parties, so, you know, it definitely is happening in the
17 background, but I think it's sort of a call from just
18 school districts expressing that it's getting more and
19 more difficult as we have for example, these ADA
20 compliant forms, and I won't veer off too off track
21 because that's coming down the road, that we have to
22 identify, you know, by a certain date the location, and
23 that's far in advance of the hearing. So OAH, I
24 acknowledge is trying to -- you know, we're all sort of
25 trying to think in advance, but we're just running up

1 against facilities issues, all kinds of issues.

2 **PRESIDING JUDGE CASTILLO:** We had a comment here.

3 **MR. SIEMBIEDA:** Yeah, just for people to understand as
4 an example with the facilities issue. We do look for
5 backup rooms up front because we know things may happen
6 and we may need to be aware and prepared for that. In
7 many situations, mine for example, last time we ended up
8 using a library from a school that then became
9 unavailable for the students during that timeframe that
10 we're holding a hearing because we had no other
11 facilities that were available that were ADA compliant
12 for us to be able to utilize that were sufficient to the
13 OAH requirements to hold the hearing. So I mean that's
14 a real practical impact on students when we're just
15 changing schedules on a Thursday for the entire next
16 week. It doesn't really suit I think the needs of
17 anybody who's sitting in the hearing room to make those
18 types of adjustments so regularly.

19 **PRESIDING JUDGE VARMA:** That was Mr. Siembieda?

20 **MR. SIEMBIEDA:** Yes.

21 **PRESIDING JUDGE CASTILLO:** Yes.

22 **MR. SIEMBIEDA:** I'm sorry.

23 **PRESIDING JUDGE VARMA:** Any other comments? So what I
24 can say is there isn't a recommendation, and we can go
25 back after I make my comments and if somebody has a

1 recommendation. To my knowledge, it is not a frequent
2 event where we have to contact the parties on the eve of
3 the hearing and tell them that we're canceling one of
4 the days or moving it around. As far as adding days, I
5 think that is something that each party should push at
6 the prehearing conference. That is really one of the
7 items that should be discussed there and ironed out. If
8 somebody shows up to hearing and now they want to add
9 five more days, I think that's an issue that should be
10 addressed with the ALJ presiding at the hearing, and the
11 parties should both be given an opportunity to be heard
12 with respect to the impact that has and it should be
13 dealt with in that process. That's how I would see it
14 playing out. With respect to the ADA issue, we have
15 traditionally held -- and this was the same thing in the
16 days of McGeorge SEHO is that events were traditionally
17 held at the school district location because that seemed
18 to be the most convenient for everybody involved.
19 Sometimes not I know, but most times it is. So we've
20 continued that practice, but it's still our event in
21 that we are the responsible party for holding it and
22 ensuring that we comply with the ADA. What is available
23 is OAH offices are available. Now that may not be
24 convenient in many situations, but that is an option
25 that is available. It would require more planning, and

1 it would require more coordination by the parties if
2 they wanted to move to an OAH location from a more
3 remote or rural district. So that is something that the
4 parties can certainly consider. If what we have asked
5 for, this I'm aware of because it's happened, you know,
6 what we have asked for with some of these locations with
7 some certain school districts is as soon as you know
8 that you would not be able to have a room that meets the
9 ADA requirements, let us know so we can work with all
10 the parties to figure out a solution, and that may mean
11 we have to delay the hearing by a week if we have to a
12 find a room, so.

13 **MALE COMMITTEE MEMBER:** I have a question.

14 **PRESIDING JUDGE VARMA:** Yes.

15 **MALE COMMITTEE MEMBER:** Can parties waive lead for ADA
16 compliant room?

17 **PRESIDING JUDGE VARMA:** I don't believe they can. You
18 know, I don't believe that the law allows for that. One
19 of the things that could be discussed in any particular
20 case is whether there is anybody that needs
21 accommodations, and that's one way you can discuss it,
22 but I don't know if there's a way we can legally waive
23 ADA requirements.

24 **MALE COMMITTEE MEMBER:** Well, that was my point. If
25 there's no witnesses who require it, you know, and then

1 why couldn't it be waived?

2 **PRESIDING JUDGE VARMA:** Right. So I think you can take
3 that up on a case and then we'll have to research it and
4 see what it says. I don't have the legal answer here
5 right now.

6 **MALE COMMITTEE MEMBER:** Okay.

7 **PRESIDING JUDGE VARMA:** So are there any recommendations
8 on this item or a further discussion? Okay. I think
9 there might be a public comment because I saw Judge
10 Broussard leave, so I'll wait a moment. Is there a
11 public comment on this item?

12 **MS. BROUSSARD:** Yes. (Inaudible).

13 **PRESIDING JUDGE VARMA:** There is a public comment on
14 this item. The location of hearings should also
15 consider the impact on the parents' ability to
16 participate and public's ability to observe. As a
17 parent who went through a due process, it was extremely
18 uncomfortable and unwelcoming to have the hearing
19 conducted at the district's office of special education
20 between two locked doors, in which access was limited,
21 to have witnesses and members of the public thwarted in
22 their free access to the hearing, to walk through an
23 office full of staff looking critically at us, to pass
24 flyers advertising training for staff in how to prepare
25 legally defensible IEPs, which stands for individualized

1 education programs for when this is transcribed, to not
2 have a safe lounge or other place to relax during break.
3 That is a public comment. Okay. We ready to move to
4 the next item? Okay. Our next item is proximity of
5 calendar dates in school district filed cases. That was
6 Ms. Léon's item, so I'll let her address that.

7 **MS. LÉON:** Again, I'm not sure that there is a
8 recommendation here, but just something for discussion
9 and would like input from the rest of the members
10 regarding -- so the calendar dates for a school district
11 filed case is much quicker than for a parent filed case.
12 The main concern here being that typically or at least
13 the way some school districts have experienced it is the
14 prehearing conference date and -- well, actually the
15 prehearing conference statement due date and the
16 evidence due date is the same day, and the main concern
17 there being, as mentioned earlier, mediation is usually
18 somewhere where we can settle and most cases will
19 settle. So, you know, it seems that having such close
20 proximity with the prehearing conference statement due
21 dates and the evidence due dates sort of just hinder or
22 burden the district's ability to be able to mediate with
23 the parents before actually going to hearing. So, you
24 know, I'd be happy, you know, any concerns or, you know,
25 just responses to a concern that the district has when

1 it files its own cases and it has to present, you know -
2 - when you present evidence, it just seems more real to
3 parents. It seems more real to parent attorneys -- to
4 parents if they're unrepresented that this is going to
5 hearing and it's, you know, it just -- it's very
6 impactful and it definitely impacts the discussion going
7 forward, sort of, you know, takes a few steps back when
8 we're discussing a settlement or negotiation. So I just
9 wanted to put that out there.

10 **PRESIDING JUDGE VARMA:** Before I ask for questions,
11 comments, did you mean that the prehearing conference
12 due date -- statement due date and the evidence due date
13 is the same day as the mediation? Is that what you're
14 saying?

15 **MS. LÉON:** Sorry. No.

16 **PRESIDING JUDGE VARMA:** Or those two are on the same
17 date?

18 **MS. LÉON:** Yeah, on the same date. I'm sorry. Yes,
19 it's the evidence due date and mediation.

20 **PRESIDING JUDGE VARMA:** Okay.

21 **MS. LÉON:** So there are a few scenarios that play out,
22 right, because we have had prehearing conference
23 statements due and evidence due the same day. We've had
24 mediation and evidence due the same day. So here we are
25 with the parents or with the other party in mediation,

1 and at the same time, it's today 5:00, we're serving you
2 with our evidence, you know. It's just a formality or,
3 you know, just to keep you -- but it is off putting and
4 it's sort of, you know, may escalate things when we may
5 very well be on track to discussion of a settlement.

6 **PRESIDING JUDGE VARMA:** Any -- Mr. Ruderman.

7 **MR. RUDERMAN:** Couple things and I'm sure getting the
8 continuous on your first date is always an option, but
9 the other thing is -- I mean I have a question for OAH
10 on this. Since the recent 9th Circuit case has there
11 been filings of mediation only. I mean I've seen some
12 districts filing mediation only as a way to get
13 mediation before they have to file formal for a hearing,
14 and I just wondered have you had an increase in
15 mediation only filings? I'm just curious about that.
16 Does anyone know?

17 **PRESIDING JUDGE VARMA:** I'll answer the question, but I
18 just want to have more -- any more discussion or did you
19 want me to answer the question first? The Committee
20 want the answer?

21 **MS. LÉON:** Yeah, answer first.

22 **PRESIDING JUDGE VARMA:** Okay. What Mr. Ruderman is
23 referring to is the November 2015 9th Circuit ruling in
24 IR versus LA Unified School District, which basically
25 said to school districts if parents don't agree with the

1 IEP you've offered, you have a duty to file a case. The
2 reality is we have not gone through the data to
3 determine if it is because of this case. In general,
4 filings are up. They're up this year more than any
5 prior year. What we are anticipating is we will see the
6 impact of this case in this fourth quarter because this
7 is the time when IEP team meetings are being held and
8 programs are being developed and disputes will arise.
9 So we are waiting to see the impact. We expect there
10 will be an impact. Whether school districts choose to
11 file more mediation only cases or whether they go ahead
12 and file straight request for due process cases, I
13 cannot say, but yes, OAH is aware of the case. We are
14 expecting an impact. Okay. So anybody wish to comment,
15 discuss further on Ms. Léon's item (overlapping)?

16 **FEMALE COMMITTEE MEMBER:** Just a clarification on -- oh,
17 sorry. Go ahead. I just want clarification on your
18 statement. You said filings are up. Are those in
19 general or those district filings are up?

20 **PRESIDING JUDGE VARMA:** In general they're up, which
21 includes proportionally speaking district filings are
22 also up.

23 **FEMALE COMMITTEE MEMBER:** Okay.

24 **PRESIDING JUDGE VARMA:** So, yeah. We are seeing an
25 increase in filings in general, yes.

1 **PRESIDING JUDGE CASTILLO:** Ms. Hatch.

2 **MS. HATCH:** Hi. I just wanted to each just the concern
3 of -- as a matter of fact, I have a case on calendar
4 right now and the PHC statement is due the day of
5 mediation, and sometimes it's difficult to push the PHC
6 date with OAH. Sometimes we're able to and sometimes it
7 kind of depends upon the judge and who gets the request
8 or how we do the request, but it does make going to
9 mediation difficult when on the one hand you're trying
10 to settle the case, but on the other hand you've got to
11 get out your evidence and prepare a PHC statement, so it
12 doesn't leave a lot of time. So if there's a way for
13 OAH to kind of give us a little -- you know, a couple
14 days at least between events, I think that'll even give
15 the parties more of an opportunity to try to get it
16 settled at mediation without having to wrangle with
17 dates.

18 **PRESIDING JUDGE VARMA:** And for the transcriber, PHC
19 stands for prehearing conference. Ms. Cooper.

20 **MS. COOPER:** From a parent's perspective, and I have
21 personally been to mediation, and I know lots of
22 families that have, I don't know if it would necessarily
23 encourage the district to actually look at the full case
24 before we sit down at mediation if these dates -- I mean
25 I guess it hasn't because the dates have been so close

1 already, but I just feel like sometimes we get to
2 mediation and it doesn't seem like the district's side
3 is all the way prepared to actually present, looked all
4 the way into all the facts and that we get there and
5 we're not making any progress, and then our children are
6 -- benefit from these quick timelines. We've already
7 wasted a lot of educational time getting to this point,
8 and I would -- and like Mr. Ruderman said, you can
9 always file for a continuance, but that those timelines
10 are there to protect our children and their precious
11 educational time.

12 **PRESIDING JUDGE VARMA:** Ms. Mulhollen.

13 **MS. MULHOLLEN:** Valerie Mulhollen. Is what you're
14 asking for is for OAH to schedule the mediation earlier?
15 I am just --

16 **MS. LEÓN:** That would be fine. I think the district
17 just wants time. I mean like you -- yes, scheduling
18 mediation would be fine and just a few days between, one
19 day, two days between the mediation and the prehearing
20 conference statement to, you know, just have the
21 opportunity to not have this -- a prehearing conference
22 statement really just has this -- it's a formality, but
23 at the same time with parents it, you know -- and I feel
24 like more than with unrepresented parents, it shows
25 that, you know, we're moving forward. We're charging

1 forward and that's a concern.

2 **MS. MULHOLLEN:** And it's a lot of work, but so I'm
3 assuming the timelines are shorter on the district filed
4 cases because you're not doing the resolution session?

5 **MS. LEÓN:** Right.

6 **MS. MULHOLLEN:** So is the mediation scheduling on the
7 same timeframe as for a parent filed case?

8 **MS. LEÓN:** I don't know that -- the answer.

9 **MS. MULHOLLEN:** Okay. So what you're asking for is to
10 shorten the time between the district filing and the
11 mediation date?

12 **MS. LEÓN:** Sure. That'd be fine. I mean, you know,
13 yes. The point -- yes. That sounds like it could
14 accomplish the district's goal of having, you know, an
15 opportunity to meet with the parents in mediation before
16 and leaving the formal preparation for hearing slightly
17 later. Yeah.

18 **PRESIDING JUDGE VARMA:** Let me give Southern California
19 a chance.

20 **PRESIDING JUDGE CASTILLO:** Yeah. Ms. Adams.

21 **MS. ADAMS:** Yeah, I would just say from the parents'
22 standpoint as well that it's a lot of work and work that
23 may end up being unnecessary, but I've had really good
24 luck with continuances when the attorneys get together
25 and just do a joint motion for continuance or alteration

1 of the mediation date. That seems to be a good
2 solution. I've never had that turned down actually, so
3 maybe others have experienced that.

4 **PRESIDING JUDGE CASTILLO:** And Ms. Hatch.

5 **MS. HATCH:** All I would say with that is sometimes, you
6 know, especially when districts are filing because we
7 haven't -- the district hasn't had a consent to an IEP,
8 a lot of times parents are unrepresented, and it is a
9 little bit more difficult to try to move those dates and
10 push things because, you know, it's just difficult to
11 have that conversation with a parent, and sometimes, you
12 know, they have a lot of questions that are really hard
13 to answer when you're just kind of trying to move dates
14 around a little bit. So that would just be -- you know,
15 it is a good option when you do have the attorneys
16 there, but sometimes the parents are not represented, so
17 it makes it tough.

18 **PRESIDING JUDGE CASTILLO:** (Inaudible).

19 **MR. GERMAN:** I'm David German. You know, I think
20 clearly as a matter of saving work and unnecessary
21 effort, it makes sense, but as it was initially framed
22 as a psychological failure to settlement, I mean I think
23 parents find districts filing against them such an
24 impossibly aggressive act to start with that it doesn't
25 really matter from their perspective if you send out

1 more documents or evidence or whatever. Just a --

2 **FEMALE COMMITTEE MEMBER:** Yeah.

3 **PRESIDING JUDGE VARMA:** Mr. Ruderman.

4 **MR. RUDERMAN:** Well, I don't know about -- I was going
5 to say something else about that. I would imagine that
6 for unrepresented parents it's extremely stressful,
7 anxiety provoking to get the filing itself, but to also
8 then be faced going to mediation with having to prepare
9 a prehearing conference and have that ready on the day
10 of mediation I think would be --

11 **FEMALE COMMITTEE MEMBER:** (Inaudible).

12 **MR. RUDERMAN:** -- probably overwhelming for a parent
13 who's not represented by anybody. So I do think I would
14 kind of echo what Ms. Léon's saying that it might be
15 good to have mediation scheduled at a time where they
16 wouldn't have to worry about that because that would be
17 quite overwhelming I would imagine for any parent who's
18 unrepresented.

19 **MS. LÉON:** And to add onto that, the response we get
20 when we ask for a request for continuance from a parent
21 is what about my child's education, and so then we --
22 you know, these are the walls facing. You know, my kid
23 is going to be without school this much longer. My
24 kid's going to be without this service this much longer.

25 **FEMALE COMMITTEE MEMBER:** Uh-huh.

1 **MS. LÉON:** So it's a concern to have mediation and just
2 evidence due or a prehearing conference statement,
3 something that involves just moving closer. It's a huge
4 formality, and so it's difficult to have that
5 conversation. It's a little bit easier when we have,
6 you know, an attorney representing the parent, you know,
7 because we can -- we know the procedures. We can, you
8 know -- and although it's a lot of work to still develop
9 these prehearing conference statement and evidence
10 binders, it's still pushes all of us when we could be
11 spending that time just discussing, knowing the case
12 better, understanding, because sometimes -- yeah, just
13 understanding the case better.

14 **PRESIDING JUDGE VARMA:** Ms. Villarreal.

15 **MS. VILLARREAL:** Colleen Villarreal. I think just going
16 along with that I always think of it in trying to
17 separate the processes. So if I'm able to focus on
18 mediation, I put my efforts toward that, and then if
19 it's clear that we're going to hearing, I can really
20 focus on the PHC statement, and I know that we kind of
21 discuss it as a formality, but I do think if you are
22 going to hearing, putting some thought into that PHC
23 statement is going to make it really important for your
24 clients, whether it's parents or the school district,
25 and putting together your evidence binders, and so we're

1 buttressing up against these quick timeline, not a lot
2 of thought goes into it and it's going to be difficult
3 for everybody, including OAH, when you get kind of
4 haphazardly put together PHC statements or evidence
5 binders just because you want to comply with dates.

6 **MALE COMMITTEE MEMBER:** Make a motion. Go ahead.

7 **FEMALE COMMITTEE MEMBER:** I don't know. Yeah. Do they
8 --

9 **PRESIDING JUDGE VARMA:** Any further comment from
10 Southern California?

11 **PRESIDING JUDGE CASTILLO:** Anything further from
12 Southern California? Nothing -- oh, we have a comment.

13 **FEMALE COMMITTEE MEMBER:** A public comment.

14 **PRESIDING JUDGE CASTILLO:** Yeah.

15 **FEMALE COMMITTEE MEMBER:** A public comment.

16 **PRESIDING JUDGE CASTILLO:** Do you have a public comment?

17 **PRESIDING JUDGE VARMA:** Can we hold that until we're
18 done with -- if there's going to be a recommendation?
19 Can we hold that for a moment?

20 **PRESIDING JUDGE CASTILLO:** Okay. Okay.

21 **PRESIDING JUDGE VARMA:** Okay. Are you going to have a
22 recommendation?

23 **MS. LEÓN:** Yes.

24 **PRESIDING JUDGE VARMA:** Okay. Let me go ahead and
25 respond first to some of the discussion from OAH's

1 perspective. Our calendaring system is pretty
2 transparent. I think it was two, maybe three Advisory
3 Committee Meetings ago that this item was discussed in
4 detail, and we provided to the community and posted as
5 well our calendaring guideline that the staff use to do
6 the calendaring, and it is true that on a district filed
7 case the timeline starts the day we get the case.
8 That's day zero. So we have to calendar things faster.
9 What we try and do for both cases, student filed or
10 district filed, is we try and build in sufficient time
11 to the calendaring of the mediation, the prehearing
12 conference, and the hearing such that -- and this is not
13 as important in the student file because we have that
14 30-day resolution period, but in district file we still
15 have to go with the issue that most parents will be
16 getting the notices through mail. So we have to build
17 that little time in as well. You know, most parents
18 when the district first files they don't have -- they
19 have not set up for e-service or e-filing with us, so we
20 have to initially send that out by mail. So that's one
21 factor that's considered in that timeline. The other
22 factor that is considered is providing sufficient space
23 for the prehearing conference and the hearing so that
24 the ALJ has time to write the order for the prehearing
25 conference and then sufficient time after the case is

1 submitted to write the decision. So those are -- there
2 are many factors that go in. The reason I say -- I
3 point out that the guide is transparent is because a
4 school district is an organization that, even if they're
5 not represented, they can use that guide, but certainly
6 if they're represented, look at the guide. Look at the
7 day you're going to file the case. If you file the case
8 on a particular day, you can calculate out based on that
9 guide when you will probably have your mediation. You
10 know that we do mediations Tuesdays, Wednesdays, and
11 Thursdays. If you file it on such a day where the
12 mediation's going end up being on a Friday based on that
13 guide, then OAH may push it out to the next week in
14 order to give more time. So you've now lost some days
15 in that timeline. So now you're running up against the
16 issue that you're talking about, that evidence is due at
17 or near the same time as the mediation or the prehearing
18 conference statements are due. So if you want, you can
19 look at that guide and say if I file this case on Monday
20 what's going to happen to the timeline? If I file this
21 case on Tuesday what's going to happen to the timeline?
22 So on and so on. So unless it's a case that has an
23 emergency issue on it, I think you as the attorneys for
24 the school district and school districts as
25 organizations that can analyze that. You can look at

1 that situation and decide maybe I'll file this case on
2 Wednesday and not on Monday. The other thing to
3 consider, and this has always been there, is that while
4 we usually allow delaying of prehearing conference
5 statements because the parties are working on a
6 settlement, if you want to file a similar request and
7 say it's because our mediation and our prehearing
8 conference statements would fall on the same day, you
9 know, we can look at that and say okay, you can delay
10 filing a prehearing conference statement for a couple of
11 days. With respect to evidence, now this may be a more
12 difficult situation and an unrepresented parent who may
13 not understand, but I know amongst attorneys you guys --
14 that the five business day evidence rule is for the
15 parties. You can agree to waive that and serve evidence
16 on each other when you want. You can certainly try that
17 with the parent as well. We also assign a mediator to
18 the mediation as the mediation's coming up. If you --
19 you know, I don't think this violates anything, but if
20 you want, you can call the mediator and ask the mediator
21 to help you with the request for a continuance from this
22 unrepresented parent. You may get more cooperation that
23 way. So, you know, the mediator's there to discuss and
24 resolve things and help move things along. The
25 prehearing conference judge certainly can't do that. It

1 would have to be a motion, but -- so those are some ways
2 that you can look at it and deal with it, but we have
3 our timelines because we need to build in those types of
4 things and help everybody out. So that's OAH's response
5 or view. Recommendation?

6 **MS. LEÓN:** This is Alejandra León. I would like to
7 recommend that OAH consider -- I understand it's being
8 considered, but it's already sort of a lot factors play
9 into this, but my recommendation is that OAH consider to
10 the extent possible separating the due date for
11 prehearing conference statements and mediations and the
12 due date for evidence.

13 **PRESIDING JUDGE VARMA:** Okay. Is there a specific
14 action you would like OAH to take or consider it --

15 **MS. LEÓN:** Yeah, and add a day or two.

16 **PRESIDING JUDGE VARMA:** -- okay. And add a day or two.
17 Okay.

18 **MS. LEÓN:** I guess I would like help from -- if you guys
19 have any other -- how otherwise to articulate -- the
20 recommendation is that OAH consider and make or schedule
21 -- that OAH consider and schedule mediation, prehearing
22 conference due dates, and evidence due dates separately.

23 **PRESIDING JUDGE VARMA:** Okay. And is this for student
24 filed cases also or just district filed cases?

25 **MS. LEÓN:** Both.

1 **MS. FATTIG:** So if I hear you right, on those situations
2 where -- this is Mindy Fattig. On those situations
3 where the mediation date is -- also corresponds with a
4 PHC statement and evidence date --

5 **MS. LEÓN:** Uh-huh.

6 **MS. FATTIG:** -- that in those cases both student and
7 district filed that OAH will make the allowance to --
8 propose to further out the PHC statement and evidence
9 two days?

10 **MS. LEÓN:** Yes. Two days. At least one day.

11 **MS. FATTIG:** One to two days.

12 **MS. LEÓN:** Yeah, one to two days. Yeah. I mean I want
13 this to be successful, so thank you.

14 **MS. FATTIG:** And I think it goes along with Ms.
15 Villarreal's comment that really we're trying to focus
16 on mediation and really put the effort and energy in
17 mediation, both from the parent and district side.
18 Trying to prepare for a hearing and the statement as
19 well, it kind of loses the effectiveness of the
20 mediation in my opinion.

21 **MS. VILLARREAL:** And I wonder -- this is Colleen
22 Villarreal -- if we can instead of moving PHC back --

23 **PRESIDING JUDGE VARMA:** Well --

24 **MS. VILLARREAL:** -- PHC statement back --

25 **PRESIDING JUDGE VARMA:** -- yeah.

1 **MS. VILLARREAL:** -- try --

2 **FEMALE COMMITTEE MEMBER:** Move mediation up?

3 **PRESIDING JUDGE VARMA:** Let me just make sure we

4 properly --

5 **FEMALE COMMITTEE MEMBER:** Yeah.

6 **PRESIDING JUDGE VARMA:** -- state this recommendation and

7 then if there's a second or a change amendment to it,

8 then we can have that discussion. So if I understand

9 the recommendation correctly, it is that OAH consider

10 and schedule mediation prehearing conference and hearing

11 dates separately for both student file and district file

12 cases such that if the prehearing conference statement

13 due date and the mediation are on the same day OAH add

14 or pace -- OAH pace out the prehearing conference.

15 **MS. FATTIG:** Or move up the mediation; correct?

16 **MS. LEÓN:** Correct.

17 **PRESIDING JUDGE VARMA:** Or move up the mediation. Is

18 there a second to the recommendation?

19 **MS. VILLARREAL:** I'll second.

20 **PRESIDING JUDGE VARMA:** Ms. Villarreal has seconded.

21 Let's go ahead and vote on it. In Northern California

22 all in favor. Okay. We have everybody in favor except

23 Ms. Cooper and Ms. Chandler. Ms. Chandler and Ms.

24 Cooper, are you a nay vote or are you abstaining?

25 **MS. CHANDLER:** This is Cindy Chandler. I don't feel

1 incredibly connected with this dilemma, and on the side
2 of the parents, I wouldn't want prehearing to move out.
3 I would rather have mediation move forward.

4 **PRESIDING JUDGE VARMA:** So right --

5 **MS. CHANDLER:** To give that gap so you got --

6 **PRESIDING JUDGE VARMA:** Right.

7 **MS. CHANDLER:** -- both of them in there, and I'd rather
8 -- I'm more in favor of moving mediation.

9 **PRESIDING JUDGE VARMA:** Okay. So you -- we can discuss
10 that further. I just need a vote right now.

11 **MS. CHANDLER:** Okay. No.

12 **PRESIDING JUDGE VARMA:** Okay. So against. And Ms.
13 Cooper?

14 **MS. COOPER:** Nay.

15 **PRESIDING JUDGE VARMA:** Okay. Judge Castillo, can you
16 do a vote count in Southern California?

17 **PRESIDING JUDGE CASTILLO:** Yea for the resolution?
18 Okay. We have Ms. Adams, Mr. Siembieda, Ms. Hatch, Mr.
19 German, and Mr. Economou in favor of the resolution.
20 Opposed to the resolution? Ms. West-Hernandez
21 abstaining, Ms. Zambrano abstains.

22 **PRESIDING JUDGE VARMA:** Okay. So what was the total
23 count of yeas?

24 **PRESIDING JUDGE CASTILLO:** Five.

25 **PRESIDING JUDGE VARMA:** Five. And we have five in

1 Northern California. So the recommendation will be
2 considered by OAH. Now there was a public comment.
3 Let's have the public comment and then -- actually no,
4 the rules require us to finish discussion of the agenda
5 item. I understand there was further discussion that
6 Ms. Chandler wanted to have.

7 **MS. CHANDLER:** Oh, okay. So this is --

8 **PRESIDING JUDGE VARMA:** So that recommendation we'll
9 consider. We're still on the same agenda item, if you
10 have further comment.

11 **MS. CHANDLER:** -- just the previous comment that I would
12 rather see mediation move forward than prehearing
13 backwards.

14 **PRESIDING JUDGE VARMA:** Now I don't know if everybody
15 heard. Ms. Chandler's comment was she would rather have
16 OAH advance the mediation than push the prehearing
17 conference further down the calendar. Mr. Ruderman.

18 **MR. RUDERMAN:** In echoing Ms. Chandler, I would move to
19 amend the prior motion to have mediation go forward
20 earlier as opposed to adjusting the dates going
21 backward. I think that's a good suggestion (inaudible).

22 **PRESIDING JUDGE VARMA:** So Ms. Léon's recommendation was
23 to push the prehearing conference out couple days on the
24 calendar. Mr. Ruderman is -- it can be a separate
25 recommendation. Your recommendation is to advance the

1 mediation.

2 **MR. RUDERMAN:** Correct.

3 **MS. LÉON:** I believe ours was either or. Was it not?

4 **MS. CHANDLER:** Currently it's either way.

5 **FEMALE COMMITTEE MEMBER:** (Inaudible).

6 **MS. LÉON:** Yeah.

7 **PRESIDING JUDGE VARMA:** Okay. Your recommendation was
8 either or?

9 **MS. LÉON:** It's --

10 **FEMALE COMMITTEE MEMBER:** No.

11 **PRESIDING JUDGE VARMA:** I tried to take it as carefully
12 as I could. Or move up the mediation. Yes.

13 **MS. LÉON:** Right.

14 **PRESIDING JUDGE VARMA:** I have it. Okay.

15 **MS. LÉON:** So sorry, that was to introduce knowing that
16 OAH is not always going to be able to push it out, but
17 may be able to -- I don't want to be -- my
18 recommendation was either or so that OAH would also have
19 --

20 **FEMALE COMMITTEE MEMBER:** Flex.

21 **MS. LÉON:** -- yeah, schedule flexibility. Before I go
22 to Southern California, Mr. Ruderman and Ms. Chandler,
23 so we do have it as or move the mediation up. Did you
24 still want to make a separate recommendation?

25 **MR. RUDERMAN:** (Inaudible).

1 **PRESIDING JUDGE VARMA:** Okay. Let's have Southern
2 California first. If there are any comments on this
3 discussion and then we can let Mr. Ruderman make a
4 separate recommendation.

5 **PRESIDING JUDGE CASTILLO:** Any comments here in Southern
6 California? None here.

7 **PRESIDING JUDGE VARMA:** Okay. Mr. Ruderman, your
8 recommendation.

9 **MR. RUDERMAN:** Well, I would frame it as a motion that
10 they move mediation up. I'm concerned mostly about the
11 unrepresented parents who would be overwhelmed by that
12 whole process, and I think they would still be quite
13 agitated going to a prehearing conference -- I mean
14 going to a mediation knowing that a prehearing
15 conference statement might be due the next day. I think
16 it would be traumatic -- hopefully reduce the level of
17 anxiety with the whole process for an unrepresented
18 parent.

19 **PRESIDING JUDGE VARMA:** Okay. So Mr. Ruderman's
20 recommendation is that OAH consider moving the mediation
21 or advancing the mediation if the prehearing conference
22 statement due date and the mediation fall on the same
23 date.

24 **MR. RUDERMAN:** Right.

25 **PRESIDING JUDGE VARMA:** Okay. Anybody second that

1 motion?

2 **MS. COOPER:** I'll second.

3 **PRESIDING JUDGE VARMA:** Ms. Cooper seconded. Okay.

4 Let's go ahead and have a vote. Northern California.

5 We have unanimous Northern California vote. In Southern
6 California, Judge Castillo.

7 **PRESIDING JUDGE CASTILLO:** In favor of the motion --
8 recommendation, sorry? Unanimous here.

9 **PRESIDING JUDGE VARMA:** Okay. And can we have the
10 public comment?

11 **FEMALE COMMITTEE MEMBER:** Probably should just amend it.

12 **FEMALE SPEAKER:** Do a roll call (inaudible).

13 **PRESIDING JUDGE CASTILLO:** (Inaudible).

14 **PRESIDING JUDGE VARMA:** Actually, let me stop there.

15 Before we have public comment, actually, I think, you
16 know, for purpose of the transcript we have to do a roll
17 call. So let's just do a roll call here. Mr. Ruderman,
18 Ms. Léon, Ms. Villarreal, Ms. Cooper, Ms. Chandler, Ms.
19 Fattig, and Ms. Mulhollen in Northern California all
20 voted in favor of the recommendation; correct?

21 **COMMITTEE MEMBERS:** Correct.

22 **PRESIDING JUDGE VARMA:** Okay. Judge Castillo, could you
23 just call out the names of everyone down south in
24 Southern California that voted yes, which is everyone?

25 **PRESIDING JUDGE CASTILLO:** Ms. West-Hernandez, Ms.

1 Zambrano, Ms. Adams, Mr. Siembieda, Ms. Hatch, Mr.
2 German, Mr. Economou, you all voted yes?

3 **COMMITTEE MEMBERS:** Yes.

4 **PRESIDING JUDGE VARMA:** Okay. Public comment.

5 **FEMALE SPEAKER:** Do I have to (inaudible).

6 **PRESIDING JUDGE VARMA:** And you do not need to state
7 your name.

8 **FEMALE SPEAKER:** Oh, well, I'll just state who -- I
9 represent students, and I'm an attorney, and I guess the
10 only thing that I would just say is that I think that if
11 you do it where the either or and if you have it where
12 the PHC can be continued, that will incite -- well, my
13 experience with the school districts, it will actually
14 encourage them to not be as prepared. And so I guess
15 that's my concern with that, but what I would just
16 suggest is for the unrepresented parents though it might
17 -- so that points -- the other thing is so for the
18 unrepresented parents, I think one idea might be is if
19 there's a sample form created by OAH that says that
20 they'll continue the date of filing the PHC. And then I
21 -- because I think that when parents see sample forms,
22 they seem to be more -- especially if the district is
23 represented by an attorney, if the form comes from OAH,
24 it seems at least -- the parents have told me that it
25 seems to be more easy to understand, and so it might be

1 clear to them that they realize that the continuance
2 isn't going to push everything, but it's just for
3 purposes of encouraging settlement. I don't know if
4 that made (inaudible). And then the other thing that I
5 just wanted to say is I think -- I do agree that OAH
6 could schedule the mediations earlier if it falls on the
7 same day as the exhibit due date. I don't think that it
8 should be where the PHC's are pushed out because like I
9 said before, I think that, you know, actually in the end
10 hurts the unrepresented parents because again it doesn't
11 give the district incentive to actually look in the
12 file, because oftentimes the districts, at least with
13 LAUSD, they're not prepared as much at the mediation
14 until it isn't actually settled and it goes to a PHC
15 because then it gets given to the counsel (inaudible).

16 **PRESIDING JUDGE VARMA:** Thank you. The next agenda item
17 is also Ms. Léon's. It is ADA compliant locations
18 provided by school districts.

19 **MS. LÉON:** I feel we've addressed this --

20 **PRESIDING JUDGE VARMA:** Actually, do you want to take a
21 break, Mr. Ruderman?

22 **MR. RUDERMAN:** I don't care if you go forward. I just
23 need to use the restroom.

24 **PRESIDING JUDGE VARMA:** Okay. You know, it's 11:00. We
25 can -- why don't we take a 10-minute break.

1 **MR. RUDERMAN:** Don't transcribe that part.

2 **PRESIDING JUDGE VARMA:** Yes. All right. We'll return
3 at 11:10, and we'll see everybody in 10 minutes. Thank
4 you.

5 **MR. RUDERMAN:** (Inaudible). Hearing (inaudible).

6 **PRESIDING JUDGE VARMA:** Sorry, 11:10 is in five minutes.
7 All right 11:15. Sorry.

8 **(Off the Record)**

9 **PRESIDING JUDGE VARMA:** -- in Southern California. And
10 we're broadcasting.

11 **PRESIDING JUDGE CASTILLO:** Yes, everyone's back.

12 **PRESIDING JUDGE VARMA:** (Inaudible). Great. So next
13 agenda item is Item 3-D, which ADA compliant locations
14 provided by school districts. Ms. León, I'll let you
15 address the item.

16 **MS. LEÓN:** We've already addressed this earlier, but in
17 a different context. So I think it's been discussed --

18 **PRESIDING JUDGE VARMA:** Okay.

19 **MS. LEÓN:** -- at length, so thank you. Do I withdraw it
20 or -- okay.

21 **PRESIDING JUDGE VARMA:** Withdraw it.

22 **MS. LEÓN:** Okay.

23 **PRESIDING JUDGE VARMA:** Okay. The agenda item is
24 withdrawn. Yeah, I didn't know if they item would be
25 sufficiently discussed since two members had asked for

1 it, so I put it on twice.

2 **MALE COMMITTEE MEMBER:** (Inaudible).

3 **PRESIDING JUDGE VARMA:** So the next item is reassignment
4 of cases following prehearing conferences. Ms. Léon.

5 **MS. LÉON:** Again, just for discussion, if after the
6 discussion we find we have enough information to make a
7 recommendation, then that would be great. So something,
8 and I realize there's already a lot of information on
9 the table, so what I'd like to discuss is just a concern
10 that when we have prehearing conference that is with an
11 administrative law judge, you know, lately I feel more
12 so these prehearing conferences may be long. We're
13 articulating, you know, really defining and really just
14 chipping away at what the issues for hearing are, and to
15 have that discussion with one judge at length and with,
16 you know -- and to have that understanding between all
17 of the parties that are going to go to the hearing, and
18 then lately it appears that, you know, we go to hearing
19 and a different judge is present and concerns that were
20 discussed and addressed at the prehearing conference are
21 -- may become topics of discussion again, and it's just
22 a little concerning to rehash on the first day of
23 hearing if we have to rehash something out what was
24 addressed at the prehearing conference with an ALJ and
25 everyone's understanding. That's happened a few times

1 and it's just, you know, I'd like to hear from others if
2 you've had this experience, if you have any concerns
3 related to it. Personally from the information I have,
4 it is a concern when we have had, you know, like I said,
5 thorough discussion, hour long prehearing conference
6 with the judge and with the other party and then to have
7 a different judge be present at the first day of hearing
8 that's different.

9 **PRESIDING JUDGE VARMA:** Any comments, discussion? Ms.
10 Mulhollen.

11 **MS. MULHOLLEN:** Valerie Mulhollen. Just from the
12 parents' side of the bar, a lot of the frustration is if
13 they use the preemptory challenge then a new judge is
14 assigned. They can't have another challenge to that
15 judge, so when you go to the PHC thinking this is going
16 to be the judge, it's sort of a mindset also on we're
17 ready for this judge. We've understood what has
18 happened at the PHC. So it is a concern also from
19 attorneys I've talked with.

20 **MR. RUDERMAN:** Yeah, I would just -- Rick Ruderman. I
21 would agree. We have the same concern. Things can get
22 lost in the translation between the PHC and a new judge.

23 **PRESIDING JUDGE VARMA:** Southern California.

24 **PRESIDING JUDGE CASTILLO:** Any comments from Southern
25 California? None.

1 **PRESIDING JUDGE VARMA:** Ms. Léon, were you going to --
2 **MS. LÉON:** One final comment related to the situation.
3 Say the parties have not exercised their preemptory
4 challenge, and we have a judge coming out from
5 Sacramento to the Bay Area or let's say, you know,
6 Watsonville, and here, you know, we understand and we
7 hear it, you know, there are reservations, but, you
8 know, to exercise at that point a, you know, preemptory
9 challenge seems a logistical adding to, you know, like
10 already maybe the location to get there was tough and
11 then suddenly to, you know, have -- considering that the
12 -- you know, faced with a preemptory challenge, is that
13 judge going to leave and another one going to come? Is
14 it too late? You know, I haven't looked at the
15 timelines, so -- you know, on whether or not, you know,
16 we could, you know -- when the judge is presented there
17 and it's different than the judge that was at the PHC.
18 If a party were to make preemptory challenge, if they
19 still had that right, is that going to cause a whole
20 bunch -- just wreak havoc with everyone? (Inaudible).
21 **PRESIDING JUDGE VARMA:** Any other comments? No. Okay.
22 Do you have a recommendation?
23 **MS. LÉON:** No, I'd like to hear OAH's response if that's
24 available.
25 **PRESIDING JUDGE VARMA:** So, you know, from OAH's

1 perspective what I can tell you is it's also a thing
2 that the ALJ doesn't like to do if they've put in a lot
3 of time on the case, preparing for the case. So changes
4 happen because in this area of law the calendar is very
5 fluid. I think this is one of the areas of law where
6 settlements happen at the very last minute, which means
7 then that ALJ's end up getting shuffled around because
8 of what they have on their calendar. And then the other
9 thing that plays into is preemptory challenges. Your
10 case may not have a preemptory challenge, but because
11 one came in on another one and now this is the only --
12 and then another judge has done the mediation, they're
13 not available and this is the only judge, we may have to
14 pull that judge off of your case to send them to the
15 other case. So this is a concern that is expressed
16 routinely in the community. This is a concern that OAH
17 tries to address. We do our best in looking at the
18 cases to see if we think it's going forward and assign
19 that way so that we can provide the community and the
20 ALJ consistency, but the fluidity of this area of law
21 and the way this system is set up, (inaudible) day
22 timeline, the preemptory challenges playing into it, you
23 know, we've seen domino effects where two preemptory
24 challenges come in on cases in a completely different
25 part of the state and we up having to shuffle judges

1 throughout the state because of who has got what going
2 on. So it's not something we're unaware of, and we do
3 take it seriously when we try and assign judges to a
4 case at the prehearing conference stage so that the goal
5 is that that case will stay with that judge, but it's
6 not always a guarantee. We can't guarantee it. We try
7 and do it as much as we can so there's consistency. Any
8 further comments or a recommendation by anyone? Oh,
9 okay. Next agenda item 3-F. Logistics of dual matters.

10 Ms. Léon.

11 **MS. LÉON:** Yes, this is (inaudible) for discussion.
12 This is related to expedited matters that include non-
13 expedited matters. They are assigned the same case
14 number, but have different timelines that can be
15 appealed on different timelines. So I guess, you know,
16 I'd like to hear from the group if, and from OAH, if
17 it's possible or, you know, whether it's desirable after
18 hearing concerns to assign different case numbers to the
19 expedited and non-expedited matters so that, you know,
20 they could be detached, because it feels like for the
21 most part really they only -- they come with the same
22 case number, but then take very different avenues. You
23 know, they can't be continued at all, must be -- you
24 know, in order to resolve, must be withdrawn or settled
25 out, and so that part of it just wanting to know if we

1 can assign a different case number to it. I know
2 there's -- you know, I've had districts want to appeal
3 decisions and just having the case number attached --
4 I'm wondering logistically whether it's possible to have
5 separate case numbers.

6 **PRESIDING JUDGE VARMA:** Okay.

7 **MS. LEÓN:** Anybody else though have any?

8 **PRESIDING JUDGE VARMA:** Ms. Mulhollen.

9 **MS. MULHOLLEN:** Couldn't you make a motion to bifurcate?
10 Wouldn't that give two different case numbers assigned?

11 **MS. LEÓN:** You know, I don't think so, because --

12 **PRESIDING JUDGE VARMA:** (Inaudible).

13 **MS. LEÓN:** -- you know, and then it's interesting
14 because they have different schedules altogether.

15 **MS. MULHOLLEN:** Right.

16 **MS. LEÓN:** But they have the same case number. Yeah.

17 **PRESIDING JUDGE VARMA:** Okay.

18 **MS. LEÓN:** Just wondering if --

19 **PRESIDING JUDGE VARMA:** Okay. Southern California,
20 comments, discussion?

21 **PRESIDING JUDGE CASTILLO:** Questions, comments from
22 Southern California? None here.

23 **PRESIDING JUDGE VARMA:** Yeah, we do -- when the filing
24 comes in, the expedited, non-expedited issues and
25 resolutions are all in one complaint, so it comes in as

1 one document. It's opened as one case.

2 **MS. LÉON:** I see.

3 **PRESIDING JUDGE VARMA:** So that is one of the reasons
4 why that happens. There are other practical reasons.
5 We try and have the same mediator for both sections so
6 that there's consistency, that the person --

7 **MS. LÉON:** Okay.

8 **PRESIDING JUDGE VARMA:** -- who mediated the expedited
9 will also be the one that mediates the non-expedited.
10 Same thing with the hearing. If the hearing goes
11 forward, then we're going to keep that ALJ on the non-
12 expedited portion. Is there a process by which we could
13 monitor that if the two cases were separate? I suppose
14 there probably is, but it starts with the fact that the
15 document comes in as one case.

16 **MS. LÉON:** Got it.

17 **PRESIDING JUDGE VARMA:** So we open it as one case. If a
18 party filed two separate, and I have seen it on very
19 rare occasions where there's an expedited filing and
20 then couple days later a non-expedited comes in, a
21 second due process hearing request, and those cases
22 would get two numbers.

23 **MS. LÉON:** Okay.

24 **PRESIDING JUDGE VARMA:** So that's why we do it that way.
25 If you wish to make a recommendation, you can certainly

1 do so.

2 **MS. LÉON:** We're going to think about that for a minute.

3 It's information gathering is what I call it.

4 (Inaudible).

5 **PRESIDING JUDGE VARMA:** This is your first term so you

6 could be back in --

7 **MS. LÉON:** Yeah, that's right.

8 **PRESIDING JUDGE VARMA:** -- October and make a

9 recommendation at that point.

10 **MS. LÉON:** (Overlapping) and gather more information.

11 I'm going to be known as the member who just, you know -

12 - so I will take that. Yes, thank you for your

13 suggestion and thanks for the information. I will be

14 back.

15 **PRESIDING JUDGE VARMA:** No recommendations on this item.

16 Any further discussion? No. Okay.

17 **PRESIDING JUDGE CASTILLO:** None from Southern

18 California.

19 **PRESIDING JUDGE VARMA:** Great. Our next item is 3-G,

20 also Ms. Léon.

21 **MS. LÉON:** I think this is the last one. (Inaudible)

22 the last.

23 **PRESIDING JUDGE VARMA:** Conducting mediations on Mondays

24 and Fridays.

25 **MS. LÉON:** This is a request for inform -- I guess

1 information gathering.

2 **MR. RUDERMAN:** No, I'm with you on this.

3 **MS. LÉON:** You know. We understand that, you know,
4 obviously your -- OAH's schedule is impacted, but having
5 three days a week only where we can have an opportunity
6 to do mediation is very difficult, because, you know, we
7 have hearings also only happened Tuesdays and Thursdays.
8 I just would like to hear, you know, whether it's a
9 possibility -- if it's ever a possibility to have
10 mediations on Mondays and Fridays.

11 **MALE COMMITTEE MEMBER:** (Inaudible).

12 **MR. RUDERMAN:** Saturday and Sunday.

13 **MS. LÉON:** And Saturday and Sunday. Why not?

14 **MR. RUDERMAN:** Yeah.

15 **MS. FATTIG:** The schools (inaudible), yeah. Just do
16 them every day.

17 **MS. LÉON:** (Inaudible) (inaudible) into it.

18 **MR. RUDERMAN:** It feels like we do have a (inaudible).

19 **PRESIDING JUDGE VARMA:** That was Mr. Ruderman asking for
20 Saturdays and Sundays.

21 **MALE COMMITTEE MEMBER:** (Inaudible) second.

22 **MR. RUDERMAN:** I heard some seconds in Southern
23 California. So move to (inaudible). (Inaudible).

24 **MALE COMMITTEE MEMBER:** All those (overlapping).

25 **PRESIDING JUDGE VARMA:** Questions, comments about

1 mediations only three days a week? Mr. Ruderman.

2 **MR. RUDERMAN:** I agree with her on this one completely.
3 I know from the old SEHO days they were Monday through
4 Friday, and I did see the volume of cases coming in and
5 almost all of our calendars are getting squeezed
6 enormously by that, including OAH, and that's an
7 opportunity to get things resolved. So I just -- I
8 favor it enormously to have mediations on Monday and
9 Friday. I would make a motion to open your schedules up
10 to Mondays and Fridays. If it means hiring more what do
11 you call the --

12 **PRESIDING JUDGE VARMA:** ALJ's.

13 **MR. RUDERMAN:** -- the ALJ -- well, no the --

14 **PRESIDING JUDGE VARMA:** The pro-temps.

15 **MR. RUDERMAN:** -- pro-temps. It would be -- I think it
16 would be useful for the parties. I know our schedules
17 are horribly impacted, and I feel like we're funneling
18 cases down the tube. It's a freeway that's backed up.

19 **FEMALE COMMITTEE MEMBER:** (Inaudible).

20 **MR. RUDERMAN:** We've got five lanes and they're backed
21 up. We got three lanes that are open and that's the way
22 I see it.

23 **MS. COOPER:** Natalie Cooper. As a parent, it would also
24 be nice because again it's that educational time that is
25 ticking away for our kids, and we're having to agree on

1 continuances because everyone's schedule. You know,
2 district's in trial on another case. Your parent
3 attorney -- it's just -- it's a time crunch for
4 everyone, and it's just pushing that resolution farther.

5 **PRESIDING JUDGE VARMA:** Comments, discussion in Southern
6 California?

7 **PRESIDING JUDGE CASTILLO:** Siembieda.

8 **MR. SIEMBIEDA:** Yeah, I would agree that we should
9 expand it to Monday and Friday. I would disagree about
10 Saturday and Sunday though.

11 **PRESIDING JUDGE VARMA:** That was -- who was that?

12 **MR. SIEMBIEDA:** Mr. Siembieda.

13 **PRESIDING JUDGE VARMA:** Okay. Siembieda.

14 **MR. RUDERMAN:** That was not a serious -- it was somewhat
15 serious.

16 **MALE COMMITTEE MEMBER:** Yeah, I don't (inaudible).

17 **PRESIDING JUDGE VARMA:** Any other questions or comments?
18 Okay. Did you have a recommendation?

19 **MS. LEÓN:** Will you please hold mediation on Monday and
20 Fridays?

21 **MR. RUDERMAN:** And Tuesday, Wednesday, Thursday.

22 **MS. LEÓN:** Tuesday -- yes, not only --

23 **PRESIDING JUDGE VARMA:** Okay.

24 **MS. LEÓN:** -- Monday and Friday or -

25 **PRESIDING JUDGE VARMA:** Ms. León's recommendation is

1 that OAH consider holding mediations on Mondays through
2 Fridays.

3 **MS. LÉON:** Yes.

4 **MR. RUDERMAN:** I second.

5 **PRESIDING JUDGE VARMA:** And Mr. Ruderman has already
6 seconded it. Okay. We'll take a vote. In Northern
7 California, all in favor? Okay. So that is everybody.
8 So Ms. Cooper yes?

9 **MS. COOPER:** Yes.

10 **PRESIDING JUDGE VARMA:** Ms. Chandler yes?

11 **MS. CHANDLER:** Yes.

12 **PRESIDING JUDGE VARMA:** Ms. Fattig yes?

13 **MS. FATTIG:** Yes.

14 **PRESIDING JUDGE VARMA:** Ms. Mulhollen yes? Mr. Ruderman
15 yes?

16 **MR. RUDERMAN:** Yes.

17 **PRESIDING JUDGE VARMA:** Ms. Léon yes?

18 **MS. LÉON:** Yes.

19 **PRESIDING JUDGE VARMA:** And Ms. Villarreal yes.

20 **MS. VILLARREAL:** Yes.

21 **PRESIDING JUDGE VARMA:** Southern California, Judge
22 Castillo.

23 **PRESIDING JUDGE CASTILLO:** All in favor Monday through
24 Friday mediations? Unanimous. Ms. Adams, Ms. Zambrano,
25 Ms. West-Hernandez, Mr. Economou, Mr. German, Ms. Hatch,

1 and Mr. Siembieda all in favor.

2 **MALE COMMITTEE MEMBER:** (Inaudible).

3 **PRESIDING JUDGE VARMA:** Okay. OAH will consider the
4 recommendation and will respond. Any public comments on
5 this?

6 **FEMALE COMMITTEE MEMBER:** None.

7 **PRESIDING JUDGE VARMA:** No. Okay. Okay. And the last
8 one is Mr. Ruderman's, ability to waive prehearing
9 conferences.

10 **MR. RUDERMAN:** Yes, I know this happens -- it's kind of
11 up to each judge, but a lot of times on the verge of
12 hearing, parties are close to settlement and we have to
13 have a prehearing conference or the prehearing
14 conference gets moved further down the road, and I'm
15 just wondering -- there's a lot of times that sometimes
16 a prehearing conference -- OAH is spending a lot of time
17 in prehearing conferences. The parties are spending a
18 lot of time in prehearing conferences on cases that
19 ultimately settle. And I think that some consideration
20 should be made to how much time both the judges and the
21 parties are spending on these prehearing conferences
22 where the case ultimately settles. Now I understand
23 that the function is helpful and that parties -- you
24 know, we have dates breathing down our neck, but I think
25 the attorneys recognize that. Certainly, the attorneys

1 on both sides recognize when all these dates are coming
2 up, and it just seems to me that it's an awful lot of
3 time on -- well, when you think about how many of those
4 prehearing conferences actually end up in hearing, I
5 guess it would be a pretty small number, and it would be
6 -- I think might be worthwhile either to -- even to
7 experiment allowing more time when the parties could go
8 -- when the parties could (inaudible) request that the
9 prehearing conference date be vacated and set on the
10 first day of hearing, because I know sometimes OAH does
11 that, and I think that it might be a big time savers,
12 and maybe try it on an experimental basis. I know you
13 don't want to show up on the first day of hearing and
14 have a three-hour discussion of the issues and
15 everything else, but it might make -- be a big
16 timesaver, because when I think of all the time the
17 judges are spending too on prehearing conferences and
18 the attorneys are spending on prehearing conferences for
19 cases that never go to hearing, it just seems like it
20 might be worthwhile to see if you could give -- and
21 particularly where there's both represented parties, I
22 think the attorneys have a pretty good understanding of
23 whether their case is really going to go to hearing or
24 not, and hopefully the attorneys wouldn't abuse that in
25 any way, but I don't think they would, but I think it

1 would be a useful thing to whether you experiment with
2 it or do it more, but it would be a timesaver for
3 everybody. So just throwing it out there for people to
4 consider and talk about.

5 **PRESIDING JUDGE VARMA:** Okay. Ms. Chandler.

6 **MS. CHANDLER:** So if I get this right, then that would
7 solve the problem of having a different judge for the
8 prehearing conference and then the hearing if you're in
9 some cases having to combine two if you've waived, but
10 then it still does go to hearing, you're going to kind
11 of do both with the same judge?

12 **PRESIDING JUDGE VARMA:** Not necessarily.

13 **MR. RUDERMAN:** Not necessarily.

14 **MS. CHANDLER:** Oh, because it sounded like you --

15 **MR. RUDERMAN:** (Overlapping).

16 **MS. CHANDLER:** -- were going to have the prehearing
17 conference on the same day as the hearing, like going
18 (inaudible).

19 **MR. RUDERMAN:** Or set the first day as the first day of
20 hearing --

21 **MS. CHANDLER:** Right.

22 **MR. RUDERMAN:** -- and then go for the next day as they
23 we'd (overlapping) --

24 **MS. CHANDLER:** Right. So then --

25 **MR. RUDERMAN:** -- start having (overlapping).

1 **MS. CHANDLER:** -- likelihood of having the same judge
2 would be greater.

3 **MR. RUDERMAN:** You've raised a good --

4 **MS. CHANDLER:** On one day.

5 **MR. RUDERMAN:** -- logistical issue. One is if the case
6 starts on the first day of hearing, actually that'd be
7 very interesting in terms of the attorneys' willingness
8 to do this process of putting the prehearing conference
9 on because then they're going to be worried they might
10 get a judge on the first day they don't like. It might
11 make them less inclined though to waive the prehearing
12 conference then --

13 **MS. CHANDLER:** Oh.

14 **MR. RUDERMAN:** -- and if they know for sure they're
15 going to settle, because there's a lot of cases you know
16 you're going to settle. You just know you're going to
17 settle them, and it just seems like -- and then
18 sometimes we have to go to the prehearing conference
19 anyway, and we know it's going to settle, and to me, it
20 just is a lot of time that's being spent that's not
21 helpful, and I know from my standpoint and even I've
22 talked to opposing counsel. There are times when we've
23 had prehearing conferences with judges we might exercise
24 a preemptory challenge on, but because we're sure the
25 case is going to settle, we don't exercise our

1 preemptory challenge. We just go forward instead, and
2 I've seen it work both ways. So that's why I'm just
3 throwing it out there for something to consider. I just
4 think it might be a big timesaver, and if there's a way
5 to do it so that less time is spent in prehearing
6 conferences that never go to hearing. I've got to guess
7 that 90 percent of your prehearing conferences don't
8 ever go to hearing. That would just be my ballpark
9 estimation. That's a lot of time.

10 **PRESIDING JUDGE VARMA:** Yes. Southern California.

11 **PRESIDING JUDGE CASTILLO:** Any questions or comments
12 here? None in Southern California.

13 **PRESIDING JUDGE VARMA:** Ms. Mulhollen.

14 **MS. MULHOLLEN:** Valerie Mulhollen. I had many cases,
15 particularly last fall, where the judge would start the
16 prehearing conference and I would say we're just waiting
17 for signatures from somebody or whatever, and I never
18 had any ALJ not continue the PHC until the next week or
19 another day in order to get it done. The problem with
20 waiving it and putting it on the first day of hearing is
21 because everyone is so impacted and busy, everything
22 comes down to the last minute. In my opinion, there's
23 no reason why it should ever be -- it can't be settled
24 prior to the PHC because everyone knows what that date
25 is. To me, that would just mean all of the parties

1 start negotiating much later, and you're taking the fire
2 from under their feet because now you're giving that
3 many extra days on having the settlement kind of drag
4 on. So I mean I guess I would be opposed to waiving it
5 or having it the first day of hearing because to me that
6 would often mean the district and opposing counsel are
7 coming in that day to actually start serious
8 negotiations.

9 **MS. CHANDLER:** This is Cindy Chandler. So you're saying
10 that it's a strategy to have that prehearing date so
11 that as people run up against it, they're more inclined
12 to get motivated to settle because it's a lot of work to
13 the PHC.

14 **PRESIDING JUDGE VARMA:** Any other comments or questions?
15 So one of the things that the prehearing conference does
16 is it allows us to discuss some of the logistics, dates,
17 locations, things like that, need for accommodations,
18 need for interpreters, need for whatever is going on,
19 and based on the discussions that we've had so far in
20 this Advisory Committee meeting, what I've heard is that
21 sometimes the location is an issue for the school
22 districts, and they're coming up against problems
23 finding a room, and then they show up to the hearing and
24 additional days get added on, and now they have more
25 logistic problems. OAH is expressing no opinion on Mr.

1 Ruderman's request, but I think the community should
2 think about some of those things, that those are some of
3 the things that we accomplish in the prehearing
4 conference. Yes, you could file a motion saying we're
5 not going to have the prehearing conference until the
6 day of the hearing, but by the way, we have all these
7 problems with the room and now we still -- the parties
8 would still have to invest time in dealing with that
9 motion and ruling on it. So, you know, OAH's position
10 is that there are many other things that are discussed
11 in a prehearing conference than just the issues for
12 hearing. And that may be impacted if we went to holding
13 the prehearing conference on the first day at the
14 hearing location. That's -- yes, Mr. Ruderman.

15 **MR. RUDERMAN:** I'm not making a motion here. I'm just -
16 -

17 **PRESIDING JUDGE VARMA:** Okay.

18 **MR. RUDERMAN:** -- throwing something out. It is to
19 consider. I mean another thing to consider would be --
20 and maybe people will get mad at me for raising this,
21 but a meet and confer -- that you -- attorneys be
22 required to meet and confer at a certain point, even in
23 advance of the prehearing conference or in our -- so
24 that the prehearing conference statements are filed that
25 we've had a meet/confer so that opposing counsels can

1 try to cut through any of the logistical issues prior to
2 the prehearing conference and that might expedite
3 things. So for example, if there is a location issue
4 that both attorneys have already talked about it. If
5 there's going to be witness issues, both attorneys have
6 talked about. So I just want -- I'm just trying to take
7 -- this is -- it's a time consuming process for
8 everybody, and I'm trying to reduce it. I'm just trying
9 to think of ways to reduce it is what I'm trying to do
10 here. So I think certainly the more you can encourage
11 parties to do a lot of that ahead of time might make it
12 move forward more quickly.

13 **PRESIDING JUDGE VARMA:** Okay. And that --

14 **PRESIDING JUDGE CASTILLO:** We have a comment --

15 **PRESIDING JUDGE VARMA:** -- yes.

16 **PRESIDING JUDGE CASTILLO:** -- we have one comment here.

17 **MR. SIEMBIEDA:** Yeah, this is Doug Siembieda. Excuse
18 me. I think two things related to Mr. Ruderman's last
19 comment. One, again we've talked about this a few ways
20 today. Not every parent is represented by another
21 attorney. So I think when you start changing process,
22 you know, you have to take into consideration parents
23 who are not represented when you're talking about meet
24 and confers and things like that. And, you know, while
25 it sounds like it might be timesaving, there are other

1 ways where I could see where that might actually add
2 time to the process or -- you know, and I think that
3 there is a finite amount of funding that school
4 districts have, so when we're being asked to look at
5 various ways that I perceive could add time, it may not
6 actually reduce time always, then I think we always have
7 to look at the funding of what's available too and the
8 increases that may come from it.

9 **PRESIDING JUDGE VARMA:** Any further comments, questions?
10 Mr. Ruderman, did you wish to make a recommendation?

11 **MR. RUDERMAN:** No.

12 **PRESIDING JUDGE VARMA:** No. Okay. So those are all the
13 agenda items. Are there any public comments, additional
14 --

15 **FEMALE SPEAKER:** Yes.

16 **PRESIDING JUDGE VARMA:** -- we did receive a public
17 comment before the meeting started that was not related
18 to any agenda items. So this is the time for me to read
19 it. It was sent to Tim Dean, the Assistant to the
20 Director and Deputy Director, who also helps put
21 together the Advisory Committee Meeting. I am a
22 parent/children who participated in special education
23 programs. I have also participated in the due process
24 system with the Office of Administrative Hearings. I'm
25 hereby submitting these comments to the Committee as I

1 am unable to attend the meeting tomorrow. I would
2 specifically like to raise the issue of OAH's failure to
3 abide by and to enforce its own policies. As an
4 example, I recently attended a mediation only where the
5 school district's attorney was allowed to attend. I did
6 not have an attorney present. The OAH policies are very
7 clear that attorneys are not allowed to attend mediation
8 only meetings. When I brought up the issue to the
9 district, the representative Cynthia Vargas replied in
10 an email, OAH will be okay with us at the mediation.
11 Ms. Vargas' response perpetuates the perception many
12 parents have come to share that OAH is district friendly
13 and that there are two standards; one for the parent and
14 one for the district. Thus, many parents feel that OAH
15 is not an impartial body and that they have given
16 preferential treatment to districts. This perception
17 has created a lack of trust in the due process system in
18 our state. Perhaps if OAH followed its own policies,
19 the issue would be resolved. That was the public
20 comment. There are no other public comments. At this
21 time, we would propose the next Advisory Committee
22 Meeting date as October 28, 2016. Is there a concern or
23 objection to that date or alternative date that any
24 Committee member would like to put out? It's so far
25 advanced on the calendar it should be okay. Okay.

1 Having heard no objection, we will have the next
2 Advisory Committee Meeting on October 28, 2016. OAH
3 will respond to the members and the community with the
4 recommendations that were made today. And at this time,
5 I want to thank everyone for their participation. Once
6 again, the application process is open for the next
7 term, so those members that are ending their term can
8 reapply. If you know somebody that you think would be
9 interested, please pass on the information. The more
10 applications that we get the better this process is. So
11 thank you all and we'll see you in October.

12 **FEMALE COMMITTEE MEMBER:** Thank you.

13 **PRESIDING JUDGE CASTILLO:** Very much.

14 **FEMALE COMMITTEE MEMBER:** Thank you.

15 **PRESIDING JUDGE VARMA:** Thank you.

16 **FEMALE COMMITTEE MEMBER:** Thank you.

17 (Special Education Advisory Committee Meeting
18 Adjourned)

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