

1 TRANSCRIPTION OF RECORDED MEETING  
2 OF  
3 OFFICE OF ADMINISTRATIVE HEARINGS  
4 SPECIAL EDUCATION ADVISORY COMMITTEE  
5 October 9, 2015  
6 Sacramento & Van Nuys, California

7 Members Present: Northern California

8 Presiding Judge Robert Varma, Facilitator

9 F. Richard Ruderman

10 Colleen Villarreal

11 Karen Mates

12 S. Diane Beall

13 Mindy Fattig

14 Valerie Mulhollen

15 Marie Alejandra Leon

16 Southern California

17 Presiding Judge Castillo, Facilitator

18 Sara Young

19 Paula West-Hernandez

20 Melissa Hatch

21 Elias R. Economou

22 Margaret Adams

23 David German

24 Blanca Zambrano

25 Douglas Siembieda

26 Transcribed by: Karin R. Lewis,

27 Foothill Transcription Company

28 October 9, 2015

Elk Grove, California

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1 in each location and unless the committee has any -- any  
2 members have any objection, I would suggest that I could  
3 facilitate and be the chair for Northern California and  
4 Judge Castillo could be the chair and facilitator for  
5 Southern California. Any objection to either of those  
6 chairpersons? Great. The next thing is the note-taker in  
7 each location. I would like to suggest that OAH, we have a  
8 note-taker up here, one of our Administrative Law Judges,  
9 Dena Coggins is available and in Southern California  
10 another Administrative Law Judge, Ted Mann is available.  
11 We would like to recommend that those individuals take  
12 notes at each location unless one of the committee members  
13 would like to be a note-taker. Any objection in Northern  
14 California?

15 **MALE MEETING MEMBER:** No.

16 **FEMALE MEETING MEMBER:** No objection.

17 **PRESIDING JUDGE VARMA:** Any objection in Southern  
18 California?

19 **MALE MEETING MEMBER:** (Inaudible.)

20 **PRESIDING JUDGE VARMA:** We'll do introductions and we'll  
21 start in Northern California. We'll state our names and  
22 our affiliation. As I said, I'm Bob Varma. I'm the  
23 Division Presiding Judge for Special Education. And we'll  
24 start with Deputy Director Crowell.

25 **MS. CROWELL:** I'm Melissa Crowell and I'm Deputy Director  
26 of the Office of Administrative Hearings. And good morning  
27 to everyone.

28 **MS. LEON:** Good morning. My name is Alejandra Leon. I am

1 a new member of the Advisory Committee and I am attorney  
2 for school districts.

3 **MS. BEALL:** Good morning. My name is Diane Beall. I'm an  
4 attorney for school districts and I'm also the parent of a  
5 special needs child.

6 **MS. VILLARREAL:** Good morning. Colleen Villarreal. I am  
7 an attorney for school districts.

8 **MS. FATTIG:** And my name's Mindy Fattig. I'm the SELPA  
9 Director for Humboldt and Del Norte Counties and I'm also a  
10 parent of a special needs child.

11 **MS. MULHOLLEN:** Valerie Mulhollen and I'm an attorney for  
12 parents.

13 **MR. RUDERMAN:** Rick Ruderman, attorney for parents and  
14 students.

15 **PRESIDING JUDGE VARMA:** And also present in Northern  
16 California is Presiding Administrative Law Judge Margaret  
17 Broussard and Administrative Law Judge Dena Coggins and  
18 Administrative Law Judge Lisa Lunsford. Southern  
19 California, Judge Castillo?

20 **PRESIDING JUDGE CASTILLO:** Presiding Administrative Law  
21 Judge Peter Paul Castillo and we'll go to my left.

22 **JUDGE LEHRMAN:** I'm June Lehrman, also another Presiding  
23 Administrative Law Judge (inaudible).

24 **MR. GERMAN:** I'm David German, parent attorney.

25 **MR. SIEMBIEDA:** Doug Siembieda, Director of Special  
26 Education Services for Huntington Beach Union High School  
27 District.

28 **MS. HATCH:** Melissa Hatch with Hatch and Cesario, school

1 district attorney.

2 **MS. ADAMS:** Margaret Adams, attorney for parents.

3 **MS. YOUNG:** Sara Young. I'm a district's Director of  
4 Special Education.

5 **MS. WEST HERNANDEZ:** Paula West-Hernandez, Team of  
6 Advocates for Special Kids and the parent of a special  
7 needs child.

8 **MS. ZAMBRANO:** I'm Blanca Zambrano, parent.

9 **MR. ECONOMOU:** Eli Economou, student attorney.

10 **PRESIDING JUDGE CASTILLO:** And with us we have our note-  
11 taker, Ted Mann, one of our Administrative Law Judges and  
12 we also have one of our new Administrative Law Judges,  
13 Christina Arden present here with us.

14 **PRESIDING JUDGE VARMA:** And Judge Lehrman already  
15 introduced herself. Excellent. The membership for the  
16 Committee, it's staggered. It's a two year term and I just  
17 want to over the members who are now beginning their second  
18 year, so this fiscal year is their second year and what I  
19 have currently is Ms. Fattig, Ms. Mates, Mr. Ruderman, Ms.  
20 Villarreal, Ms. Mulhollen in Northern California. And in  
21 Southern California I have Ms. Alyassi, Mr. German, Ms.  
22 Hatch, Ms. West-Hernandez, Ms. Young, Ms. Zambrano, Mr.  
23 Economou and Ms. Adams. The new members, Ms. Beall in  
24 Northern California is starting another term, so she is a  
25 new member even though she's been on the membership before.  
26 Cindy Chandler, who is not here today. Natalie Cooper, who  
27 is not here today. Ms. Leon, who already introduced  
28 herself. And then in Southern California, Mr. Siembieda;

1 did I pronounce that correctly, sir?

2 **MR. SIEMBIDEA:** Yeah, that's correct, yeah.

3 **PRESIDING JUDGE VARMA:** So for the members who are in their  
4 second year, the membership will end after our April  
5 meeting and then we will obviously have an open period for  
6 new applications. If any of you would wish to continue,  
7 please apply. We really appreciate the folks that do apply  
8 and attend the meetings. The expectation is of the members  
9 to fully benefit from the experience that each member has  
10 to offer, we look forward to your full participation. We  
11 understand that your time is valuable and scarce, and so we  
12 really do appreciate that you do come and spend this time  
13 with us twice a year. We expect that you will attend every  
14 meeting, one in spring and one in fall. If you're unable  
15 to attend, please contact myself or Tim Dean. Some of the  
16 folks that are not here today did contact myself or Tim  
17 Dean, so we knew you were not coming. If you fail to  
18 attend two meetings, you could be removed from the  
19 Committee and it has to -- it could be any two meetings.  
20 It does not have to be two consecutive meetings. The  
21 overview of the Advisory Committee process, I'm the chair  
22 for the meeting up here, so I will go ahead and present the  
23 OAH items and discuss -- and we'll have discussion by the  
24 Committee. After that we will have member proposed items.  
25 The agenda has the list for all the items that the members  
26 proposed for this meeting. I put them all on there.  
27 Anything that is a recommendation will require a second for  
28 the recommendation. We will have a vote in Northern

1 California and in Southern California. And the vote has to  
2 be by roll call, so we will need everybody to do a verbal  
3 aye or nay or abstention. Any amendment as far as what we  
4 follow in this is the Open Meeting Act. We do not have to  
5 do the Robert's Rules of Order. We sent a copy of the pen  
6 Meeting Act to all of the members and it was also available  
7 here, as well as in Southern California. It is also posted  
8 on our website. Our agenda is also posted on our website.  
9 Also available for the public and for the members was the  
10 summary from the last meeting, as well as the response from  
11 OAH to the recommendation that was made at the last  
12 meeting. As we proceed through this process, we will  
13 follow the same process of discussing each agenda item. If  
14 there are any recommendations and somebody seconds it,  
15 we'll take a vote. Any amendments will require a second.  
16 We'll go through that process for each one. The public can  
17 comment on any agenda item. We will read or take public  
18 comments at the end of the discussion for each agenda item  
19 by the Committee. As I said, we follow the Open Meeting  
20 Act, which has been presented to everyone. There's also a  
21 Handy Guide to the Bagley-Keene Open Meeting Act, which we  
22 have also included for every member and is posted on our  
23 website. During the fall meeting we highlight the key  
24 provisions of the Open Meetings Act because it is the  
25 beginning of the new term. The number one thing that we're  
26 always concerned about with the Open Meeting Act is the  
27 Serial Meeting portion and that is discussed on page 5 of  
28 the Handy Guide, as well as it is in the statute further

1 down that is attached to the Handy Guide. Any congregation  
2 or majority of the members of the state body at the same  
3 time under -- this is under Government Code 11122.5(a), any  
4 congregation or majority of the members of a state body at  
5 the same time and place to hear, discuss or deliberate upon  
6 any item that is within the subject matter jurisdiction of  
7 the state body to which it pertains. And that basically  
8 means that we are only able to discuss what is on the  
9 agenda. If there is anything additional, folks can ask  
10 they be added to the next agenda or they can email us when  
11 we get ready for the next meeting. Any questions or  
12 comments about the process? Excellent. The next item is  
13 staff changes at OAH and this seems to be thing that we  
14 have do every time because there are changes all the time  
15 at OAH. I'll start with former Administrative Law Judge  
16 June Lehrman. She's been appointed as the Presiding  
17 Administrative Law Judge in Van Nuys and she joins Judge  
18 Castillo as the second Presiding Administrative Law Judge  
19 in Van Nuys. Former Administrative Law Judge Margaret  
20 Broussard has been appointed as the Presiding  
21 Administrative Law Judge in Sacramento. So those are the  
22 three Presiding Divisional Administrative Law Judges, Judge  
23 Castillo, Judge Lehrman and Judge Broussard. In Sacramento  
24 we have several new ALJs. The new ALJs are Jamie Errecart,  
25 Lisa Lunsford, who is present and Dena Coggins, who is  
26 present. In Southern California we have a new ALJ,  
27 Christine Arden, who was present earlier. I think she  
28 left. Those are the new ALJs for the Special Education

1 Division since our meeting in April. We have also had some  
2 departures and retirements. Judge (inaudible) Ayewady  
3 (phonetic) and Judge Paul Kraus have left OAH. Judge Susan  
4 Ruff, who was out of our San Diego, Southern California  
5 office has retired since the end of September. Because of  
6 the departures and promotions there are current recruitment  
7 opportunities at OAH. Sacramento is currently looking to  
8 fill behind Judge Ayewady. Van Nuys is looking to fill  
9 behind Judge Ruff and Presiding Administrative Law Judge  
10 Lehrman. We've also had changes in staff. Jennifer Haley  
11 is the new Staff Services Manager. She now supervises all  
12 of the special education staff. We have added two new Case  
13 Managers, Arceli Davila (phonetic) and Richard Burillo  
14 (phonetic) as well as a new -- in Northern California and  
15 in Southern California we've added a new Case Manager,  
16 Stephanie Kent, who just started last week. Those are the  
17 staff changes. Any comments or questions about that?  
18 Excellent. Now I'll go on to the hearing and mediation  
19 process. The first item is the ADA certification process.  
20 This is an OAH item that we've placed on the agenda. We  
21 want to inform the community that since September of 2015,  
22 the beginning of September we have implemented a  
23 certification process for local education agencies to  
24 certify that any location used for an OAH matter, which  
25 would usually be mediation or hearings. Sometimes we do,  
26 on rare occasions hold Pre-Hearing Conferences at a  
27 location outside of OAH, that any of those locations used  
28 comply with the ADA and other related state and federal

1 laws with respect to accessibility. The certification  
2 process is initiated with every new complaint that we  
3 receive. The local education agency can also access the  
4 certification form online, on our website. For the cases  
5 that were filed before September of 2015, as we get to the  
6 Pre-Hearing Conference stage or the mediation stage, we  
7 will reach out and ask for the certification to be complied  
8 with. So there is a lag time. I think in the next few  
9 months everything will catch up and we'll just need to do  
10 it with the new filings. Any comments on ADA certification  
11 process? Excellent. The next item is also an OAH item.  
12 Request for reasonable accommodation and accessibility is  
13 another item where we wish to inform the community on where  
14 we are. We've been committed to providing accessibility  
15 and accommodations to the community in all of our  
16 proceedings. The website has been updated with additional  
17 information on the process to request an accommodation.  
18 There is a tab for accessibility. It's in our general  
19 section as well as in our special education section on the  
20 website. We have also introduced a new form that can be  
21 filled out and submitted to the case manager for anyone  
22 that requires an accommodation. Any comments or questions  
23 on that?

24 **FEMALE MEETING MEMBER:** (Inaudible.)

25 **PRESIDING JUDGE VARMA:** Sorry.

26 **FEMALE MEETING MEMBER:** She was asking me and I --

27 **PRESIDING JUDGE VARMA:** No. Does anybody require Spanish  
28 interpretation in Northern California?

1 **FEMALE MEETING MEMBER:** No.

2 **MALE MEETING MEMBER:** No.

3 **PRESIDING JUDGE VARMA:** Does anybody require Spanish  
4 interpretation in Southern California?

5 **PRESIDING JUDGE CASTILLO:** We don't have any members of the  
6 public.

7 **PRESIDING JUDGE VARMA:** No, we're okay. Any comments from  
8 the committee members on the reasonable accommodation item?  
9 Item 3(c), revising the Guide to Understanding Special  
10 Education and Due Process and the Frequently Asked  
11 Questions. This is another item where we wish to update  
12 the community on where we are. The Guide to Understanding  
13 Special Education and Due Process Hearings has undergone a  
14 substantial rewrite with the goal of making it readable and  
15 understandable at a sixth grade reading level. It is going  
16 through its final edits at this point and we have to -- we  
17 hope to have it posted within the next couple of weeks to  
18 replace the guide that's currently there. If I recall  
19 correctly, the guide that is currently there is about a  
20 hundred some pages. This new guide will be somewhere  
21 around the 40 some page range, so we've been able to  
22 simplify it and make it much more user friendly. And on  
23 that piece, I want to acknowledge two of our Administrative  
24 Law Judges, Judge Tully and Judge Lepkowsky who have done a  
25 lot of the rewriting. So we really appreciate the time and  
26 effort. The Frequently Asked Questions document is also  
27 undergoing a rewrite and we hope to have that posted before  
28 the end of the calendar year. So there is one there

1 currently on the website. We hope to change that and make  
2 it more readable and user friendly as well. Any comments  
3 on this item?

4 **PRESIDING JUDGE CASTILLO:** Bob, did you want to add about a  
5 translation?

6 **PRESIDING JUDGE VARMA:** Yes. We will translate those  
7 documents. As the current format is, we translate into the  
8 five most commonly spoken languages in California, so those  
9 documents will go through translation. They'll be  
10 submitted for translation once we have the final English  
11 version.

12 **FEMALE MEETING MEMBER:** Will those also be posted then?

13 **PRESIDING JUDGE VARMA:** Yes. Filing by email, another OAH  
14 item. Where we are currently, this is something that has  
15 been discussed with the Committee before. It is something  
16 that the community has been asking for and we want to --  
17 we're happy to announce that in September of 2015 we were  
18 able to set up the system so we can now accept filings by  
19 email. And I know that we did send out the information on  
20 that through the list serve. It's also posted on the  
21 website, the process and how you file and the email address  
22 to file and many of the attorneys and parents have been  
23 utilizing it, so it's working well. We are currently still  
24 working on rolling out the process of service of OAH Orders  
25 and Decisions by emails and that's going to be the next  
26 step in our e-file. Any comments on e-filing, email  
27 filing?

28 **MALE MEETING MEMBER:** Thank you.

1 **FEMALE MEETING MEMBER:** Thank you, (inaudible).

2 **PRESIDING JUDGE VARMA:** Yes. I think at the end with  
3 decisions we'll still have to mail a copy because we're  
4 required to, but it will be a courtesy email copy for the  
5 folks that sign up to receive those by email, similar to  
6 what has been going on with faxes. Late filing of Pre-  
7 Hearing Conference Statements, another OAH item. This is  
8 in response to questions we've gotten from members and we  
9 just want to reaffirm the process that we had agreed to  
10 with the community, which is that if you are working on a  
11 settlement, it is fine to go ahead and file your Pre-  
12 Hearing Conference Statement later than the three business  
13 days before the Pre-Hearing Conference, so long as it's  
14 filed by noon the business day before the Pre-Hearing  
15 Conference and so as long as you do inform us that that is  
16 what is going on at the time that was originally due. And  
17 many folks do this either through a pleading or just a  
18 letter telling us that they're going to late file their  
19 Pre-Hearing Conference Statement and either form is fine.  
20 The biggest thing for OAH, the ALJs is so that we know that  
21 that's where you are in the stage, so then we don't have to  
22 wonder what the status of the case is and call people and  
23 ask where the Pre-Hearing Conference Statements are. The  
24 process has worked very well. Sometimes folks just forget  
25 to let us know. Any -- yes?

26 **MR. RUDERMAN:** I actually -- this is -- I was going to send  
27 this in as an agenda item, but I've been in the middle of  
28 an expedite (inaudible) and I just forgot. But related to

1 Pre-Hearing Conference and I thought this would be a timely  
2 time to bring it up. I think considering how much time is  
3 spent on Pre-Hearing Conferences on cases that never  
4 (inaudible), I would say 97 percent of the cases never go  
5 to hearing and a lot -- we go to a lot of Pre-Hearing  
6 Conferences where we're actively involved in settlement  
7 discussions and --

8 **FEMALE MEETING MEMBER:** Oh-oh.

9 **PRESIDING JUDGE VARMA:** Van Nuys, are you still there?  
10 Okay, it looks like we lost you for a little bit, Van Nuys?

11 **MALE MEETING MEMBER:** Yeah.

12 **PRESIDING JUDGE VARMA:** Mr. Ruderman was addressing the  
13 Pre-Hearing Conference Statements. Is everything visible  
14 online? Are we good? Okay. Would you repeat that just in  
15 case?

16 **MR. RUDERMAN:** Yeah. I've thought a lot about how much  
17 time we spend, even just preparing Pre-Hearing Conference  
18 Statements and participating in Pre-Hearing Conferences  
19 where the case is not going to go to hearing and the  
20 attorneys know it's not going to go to hearing and it's a  
21 lot of resource time and I think it's a lot of resource  
22 time for judges too. And I've wondered if there's a  
23 process we could do and I'm just kind of wracking my brain.  
24 This may have to be agendaed for the next meeting, but I'm  
25 just throwing this out for people to consider, whether  
26 there could be a process, and I don't know if this is the  
27 solution or not where the attorneys could waive the PHC and  
28 propose a different date so that we -- especially when

1 we're like two or three sentences away from a settlement  
2 and we have a scheduled Pre-Hearing Conference that  
3 sometimes we're having to participate in and I think of the  
4 amount of time that that takes up for everybody. To me it  
5 would just be nice if there was a way we could do that.

6 **MS. MULHOLLEN:** I actually have frequently, if I'm really  
7 close, I mean if it's really close is --

8 **PRESIDING JUDGE VARMA:** And just for --

9 **MS. MULHOLLEN:** I'm sorry?

10 **PRESIDING JUDGE VARMA:** Could you just identify yourself  
11 because --

12 **MS. MULHOLLEN:** I'm sorry.

13 **PRESIDING JUDGE VARMA:** -- they're going to transcribe this  
14 later, as well as Southern California.

15 **MS. MULHOLLEN:** I'm Valerie Mulhollen.

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

17 **MS. MULHOLLEN:** And what I have done frequently is that  
18 when the Judge calls to open the Pre-Hearing Conference I  
19 will say to the Judge, Your Honor, would it be possible to  
20 reschedule the Pre-Hearing Conference until the next  
21 available date. We're finishing up. We're just waiting  
22 for signatures from the District or whatever and the Judges  
23 have always granted that for me so that we don't have to go  
24 through the (inaudible).

25 **MR. RUDERMAN:** Right. We've done that too but I think  
26 there's a lot of times too where we're even -- I don't even  
27 know if it would be necessary to prepare the Pre-Hearing  
28 Conference Statements. And I'm just wondering if there

1 would be a way to expedite that. It would save everybody a  
2 lot of time, particularly in cases where we anticipate a  
3 settlement, because I think the attorneys generally have a  
4 pretty good handle on the notion of whether a case is going  
5 to settle. And, but many times we're forced to submit Pre-  
6 Hearing Conference Statements or even participate in a Pre-  
7 Hearing Conference and while that may not take that long,  
8 it can be a half an hour by the time the Judge gets the  
9 parties on the line. If you have multiple parties it could  
10 be -- I've sat for 30 minutes while we're convening a Pre-  
11 Hearing Conference where we all tell the Judge is, hey,  
12 we're two sentences away from a settlement, we'd like to  
13 reset the date. And I just wondered if there's a more  
14 expeditious way of doing it. And I recognize this isn't an  
15 agenda, but I'm just opening up as something for people to  
16 consider, if there's a way we could expedite that and save  
17 the people time.

18 **PRESIDING JUDGE VARMA:** Okay. If there are no other  
19 comments, what I would like to suggest is what Mr. Ruderman  
20 is suggesting is that I put this on as an agenda item for  
21 the next meeting and we're certainly willing to do that.  
22 Okay, and we'll appoint it to you to address when we do the  
23 next meeting.

24 **MR. RUDERMAN:** I'll try to have a more specific proposal  
25 then, but I would welcome other people's input, you know,  
26 who have, I think encountered the same concern.

27 **PRESIDING JUDGE VARMA:** Anything, any other comments or  
28 questions about Pre-Hearing Conference Statements, late

1 filing of them? Anything from the community? The last OAH  
2 item on the agenda is outreach presentations. It is just  
3 another informational thing to say we are continuing to do  
4 outreach presentations. Any party that is interested  
5 should contact either the local Presiding Administrative  
6 Law Judge or myself and the rules for these presentations  
7 remain the same as we have espoused before, which is they  
8 must be open to all. There's no charge to the community  
9 and we cannot present or co-present with another agency, so  
10 it has to be just OAH at that time. Any comments about  
11 outreach presentations? Okay. We're moving at a much  
12 faster pace than I had anticipated. Item 3(g) is  
13 California Department of Education's attendance at the  
14 Advisory Committee Meeting. This agenda item was proposed  
15 by Mr. Ruderman at the last meeting, so at this point I  
16 will let him address the Committee and the community.

17 **MR. RUDERMAN:** I thought I'd pretty much addressed it at  
18 the last meeting. I thought it would be good if CDE was  
19 here because a number of issues have come up related to  
20 their position on what's going on here. I know they are  
21 the ones who contract with OAH. I think in particular  
22 around some of the interpretation too of some of the laws,  
23 like on expedited hearings and whatnot. I just thought it  
24 would be useful that they would have a member present. As  
25 I recall, there was a consensus that that would be a good  
26 thing to have happen.

27 **PRESIDING JUDGE VARMA:** Anybody wish to comment on CDE's  
28 presence or non-presence at the Advisory Committee Meeting?

1 Did you want to make a proposal?

2 **MR. RUDERMAN:** Well, I would move that we request that CDE  
3 send someone to the Advisory Committee Meeting so that they  
4 could participate and hear what the various members are  
5 saying about the process and provide input.

6 **PRESIDING JUDGE VARMA:** Okay.

7 **MR. RUDERMAN:** And, I mean they are -- I mean, in theory  
8 aren't they the oversight of this process?

9 **PRESIDING JUDGE VARMA:** They contract with us and then  
10 under that contract we have to do the Advisory Committee  
11 Meeting and run the meeting. That's the extent of the  
12 contract. Whether they're legally responsible for  
13 education in California, yes, so in that broad oversight, I  
14 see your point.

15 **MR. RUDERMAN:** Well, I think the other reason -- so I'm  
16 making the motion, but the other thing I would just speak  
17 to is if there's issues like how Special Ed complaints are  
18 handled versus, say compliance complaints and things like  
19 that, but there are a number of issues in terms of the  
20 scheduling and OAH's interpretation of various laws. I  
21 think it would be useful to have CDE present, so we're  
22 making the motion.

23 **PRESIDING JUDGE VARMA:** So your motion is that -- your  
24 proposal is that OAH contact CDE and invite them to the  
25 Advisory Committee Meeting?

26 **MR. RUDERMAN:** That's my motion.

27 **PRESIDING JUDGE VARMA:** Okay. Any second?

28 **MS. MULHOLLEN:** Can I second and ask for clarification?

1       **PRESIDING JUDGE VARMA:** Sure.

2       **MS. MULHOLLEN:** I second that. Who from CDE? I mean, I'm  
3 assuming you want somebody from the Legal Department, from  
4 the -- I mean --

5       **MR. RUDERMAN:** From the Special Ed Division preferably. I  
6 think that's a good idea, that we should specify who we  
7 would want. It would -- I do know, you know, because I was  
8 at McGeorge when they had the contract and I do recall that  
9 all of the state meetings, CDE often came in and a  
10 gentleman named Paul Hinkle, I believe was the one who used  
11 to come and I don't know exactly what his title was, but I  
12 believe he was responsible -- he may have been responsible  
13 for the contract with McGeorge at that time, but I do  
14 recall that he always attended the meetings. And I do  
15 think that there was some useful communications that went  
16 on between the department and McGeorge when they -- and so  
17 it just seems to me that it would be useful for somebody.  
18 Of course he was in the Special Ed Division and we'd also  
19 be -- I'd welcome any of their attorneys. I would welcome  
20 the head of Special Ed, whoever they want to send over.

21       **PRESIDING JUDGE VARMA:** Any other comments or discussion on  
22 this item? So has your proposal been amended?

23       **MR. RUDERMAN:** If you want to amend it, go ahead. I don't  
24 have an amendment.

25       **MS. MULHOLLEN:** I just thought it should be -- I mean, they  
26 could send over a secretary by -- and I think you want to  
27 specify who the person is. I just wouldn't know who that  
28 was, so.

1 **MR. RUDERMAN:** But, see from my standpoint it would seem to  
2 me that it would make sense for CDE to identify who they  
3 think would be the best person to send over.

4 **MS. MULHOLLEN:** Okay.

5 **MR. RUDERMAN:** So I don't -- I just think that we should --  
6 my feeling is we should let them know that we would welcome  
7 their participation, that we'd like to invite them to this  
8 process.

9 **PRESIDING JUDGE VARMA:** So could you phrase your proposal  
10 as you want to propose it and then --

11 **MR. RUDERMAN:** Thanks a lot.

12 **PRESIDING JUDGE VARMA:** -- we'll second it and then we'll  
13 vote on it.

14 **MR. RUDERMAN:** Okay. Well, the motion is that a  
15 representative from the California Department of Education  
16 be invited to attend these meetings and we request they  
17 would attend each of the meetings.

18 **PRESIDING JUDGE VARMA:** Do you still second it?

19 **MS. MULHOLLEN:** I still second it.

20 **PRESIDING JUDGE VARMA:** Okay. So we'll take a vote. We'll  
21 go ahead and vote in Northern California first. All in  
22 favor?

23 **MR. RUDERMAN:** Aye.

24 **MS. VILLARREAL:** Aye.

25 **PRESIDING JUDGE VARMA:** Okay. So we have Ms. Villarreal,  
26 all right. Ms. Beall, all right, Ms. Leon, everybody.

27 Okay, everybody in Northern California has voted yes.

28 There are no no votes and no abstentions. Judge Castillo,

1 could you do the vote in your office?

2 **PRESIDING JUDGE CASTILLO:** All in favor of Mr. Ruderman's  
3 motion, please raise your hand. All in Southern California  
4 are in favor of the motion.

5 **PRESIDING JUDGE VARMA:** Okay.

6 **PRESIDING JUDGE CASTILLO:** None in opposition.

7 **PRESIDING JUDGE VARMA:** OAH will follow-up on that  
8 proposal. Okay, the next item. Any public comments?  
9 Okay. The next item, continuances of OAH Special Education  
10 matters. This was an item that Ms. Leon wanted on the  
11 agenda, so I will let her address it.

12 **MS. LEON:** One concern is that I hear from parties in due  
13 process hearings, when there is agreement between, say the  
14 student's attorney or the parent and the District's  
15 attorney that there be a continuance. And that there --  
16 that the continuance state it's a joint request for  
17 continuance and that the continuance states unavailability.  
18 Recently we've seen one or two examples of the request,  
19 joint request for a continuance being denied. And so I  
20 just -- I guess the concern is, is what's the relationship  
21 between when there's a joint request for continuance and  
22 good cause when the parties have stated, you know, both  
23 parties are unavailable and for their stated reasons. And  
24 then just receiving a denial of the request for a  
25 continuance. So I guess I just -- it's seeking  
26 clarification from OAH as to why that is when we have a  
27 joint request for a continuance, both parties have stated  
28 their reasons for unavailability, if there can be

1 clarification as to what constitutes good cause.

2 **PRESIDING JUDGE VARMA:** Okay. Just for my clarification,  
3 are you talking about the initial request or any follow up,  
4 second or further requests?

5 **MS. LEON:** You know, I guess it would be in any  
6 circumstance where both parties have agreed that there's a  
7 need for a continuance, so whether it be an initial request  
8 for a continuance or a second request for a continuance,  
9 once both parties have agreed and stated, jeez, these dates  
10 don't work and we're both requesting it jointly. That's --  
11 I guess it would be in any situation where that -- where  
12 that arises, both parties requesting it, whether it be  
13 initial or second.

14 **PRESIDING JUDGE VARMA:** Anyone else wish to comment on this  
15 item? Mr. Ruderman?

16 **MR. RUDERMAN:** I agree with her. I think it's -- well,  
17 one, we need clarification, but two, I think more deference  
18 should be given when the parties are jointly requesting a  
19 continuance. I think it's become very problematic for the  
20 practitioners particularly when we're getting independent  
21 assessments as part of an interim agreement. And part of  
22 the difficulty, of course in settlements is identifying  
23 independent assessors who both parties feel confident in  
24 and there's a limited number of those people and sometimes  
25 they're booked out for a long time and then we're waiting  
26 on them and the parties are -- this is most common scenario  
27 that I encounter. And then the parties want to kick the  
28 dates because they're waiting on an independent assessment

1 that they don't have a whole lot of control over because  
2 it's a person who has -- just puts it in the queue and we  
3 have to wait. And we've found OAH to be kind of rigid at  
4 times about denying joint requests for continuances and I  
5 guess I would greatly appreciate more flexibility on that  
6 and more deference to the parties. Because if the parties  
7 feel they're headed toward resolution, I think we want to  
8 give deference to that rather than -- in fact, that's to me  
9 consistent with the code, which actually requires pushing  
10 the parties towards trying to resolve it themselves. And I  
11 think that -- I know putting pressure on the parties to  
12 move the dates is a two-edged sword. On the one hand it  
13 sometimes helps push the parties to settle, but on the  
14 other hand it also could lead parties to spend a lot of  
15 time on legal fees preparing for hearing. So I think I  
16 would like OAH to be clear about its policy on that and  
17 frankly, loosen its policy. I'm commenting again from my  
18 own experience. When I was at McGeorge they put cases off  
19 calendar and in fact, it's my understanding that -- and I  
20 don't know how this has been eliminated but it was my  
21 understanding at some point the California Department of  
22 Education did not like that. And that's why OAH has been  
23 more strict about timelines and I don't -- I don't know the  
24 genesis of that, but I do know that that -- while I think  
25 that my understanding was that the Department of Education  
26 was not happy about the number of cases that were off  
27 calendar, I do think that that (inaudible) was a useful  
28 function and it contributed to a lot of settlements and

1 better relations between parties too. So I do -- I welcome  
2 her -- Ms. Leon's comment from the student's side.

3 **PRESIDING JUDGE VARMA:** Okay, Ms. Mulhollen?

4 **MS. MULHOLLEN:** Valerie Mulhollen. It is my understanding  
5 that the policy from OAH is that the first continuance is  
6 granted. The first continuance has to be within a three  
7 month period and that the second continuance is only for  
8 good cause. And they -- on all of the decisions on  
9 granting or denying, there's the blurb on what good cause  
10 is and that would be. I think, at least from my  
11 perspective is the law is clear on the point of having the  
12 timelines for the due process hearings is to get a speedy  
13 result. So pushing the continuances off repeatedly just  
14 extends that timeline and at least from my experience is  
15 that if I'm filing a case, unless it's an interim agreement  
16 that we're agreeing to a new assessment, I wouldn't file  
17 the case until I had the assessment, so that that shouldn't  
18 be interfering with the timelines and the student getting  
19 the appropriate placement as quickly as possible. But I  
20 mean, I think that's why CDE didn't like the old McGeorge  
21 way of putting it off.

22 **MS. LEON:** Yeah. In making a response to Ms. Mulhollen's  
23 comment is that that's a different situation, I think  
24 slightly different than what we're discussing because in  
25 that situation it sounds like one party would not be in  
26 agreement. We're talking about joint requests for  
27 continuances. And I understand, yes, in some situations  
28 you probably will have, you know, the parties, maybe in

1 anticipation or to prevent litigation can discuss this  
2 outside of the due process hearing process, but sometimes  
3 the parties are at litigation and have filed a complaint  
4 because there has been sort of, like the exasperation and  
5 we can't move forward anymore without attorneys or even  
6 parents themselves can move forward with the hearing. And  
7 what you have instead is, you know, you've come -- it's  
8 taken mediation with an OAH mediator and it's taken a lot  
9 of discussion, even outside and you guys -- you know, you  
10 guys have not used that process usefully and efficiently  
11 and you guys have now finally come to an agreement about  
12 which assessor is going to do it. And that assessor has a  
13 six month queue or a three month queue, you know, like a  
14 backlog. And, you know, we really want to resolve this at  
15 this point. The parent and the District really are really  
16 invested in this process. Is it really time to drop out  
17 and sort of wait for it. That's one option, but for both  
18 parties, sort of the sense of we've invested so much time  
19 in this, let's go forward, can we get a continuance of  
20 this. And we -- I understand. It's -- unfortunately it's  
21 a drain on resources on OAH, it's a drain on resources on  
22 the parties, but ultimately when the parties are so adamant  
23 and have now even agreed to a joint request for a  
24 continuance, it's because it's going to -- we're moving  
25 somewhere and this is going somewhere, so in those specific  
26 situations.

27 **MS. MULHOLLEN:** Right. But once again, that was the first  
28 request, then it would be granted automatically.

1       **PRESIDING JUDGE VARMA:** Let me just make sure that we give  
2 Southern California an equal opportunity. Anybody wish to  
3 comment on this before Mr. Ruderman comments again?

4       **PRESIDING JUDGE CASTILLO:** Ms. Adams?

5       **MS. ADAMS:** Yes, Margaret Adams. I guess the question  
6 would be whether the pendency of an assessment agreed to by  
7 the two parties is good cause and to me it seems like it  
8 would be a really strong factor, but I don't know if there  
9 -- I haven't really encountered the situation where there's  
10 one pending and it's been denied. But it seems like it  
11 would be a factor contributing to good cause.

12       **PRESIDING JUDGE CASTILLO:** Any other comments from Southern  
13 California? Nothing further from Southern California,  
14 Judge Varma.

15       **PRESIDING JUDGE VARMA:** Mr. Ruderman?

16       **MR. RUDERMAN:** Yeah, a couple things. First off, I know  
17 we've encountered situations where there's a long delay for  
18 the independent assessment and we've had it denied by OAH  
19 where it's a joint request. And attorneys have done some  
20 work arounds like withdrawing without prejudice and there's  
21 been a stipulation to extend the statute of limitations,  
22 but I'm very uncomfortable doing that. I don't think we  
23 should be having to -- it requires us to draw up a whole  
24 new -- a new agreement, which is more attorney time and I  
25 don't -- I think that's -- I don't like that work around.  
26 The other thing too, to address Ms. Mulhollen's concern,  
27 typically when we're in that process, I though greatly  
28 appreciate the concern that what's the student -- a concern

1 about whether the student's needs are being met in the  
2 interim while we're waiting for this. But it's been also  
3 my experience that the parties do come together on certain  
4 items of the student's program in the interim agreement,  
5 that they at least agree can be implemented pending the  
6 independent assessment. So I think that there's progress  
7 being made. And so that's the other thing too is I don't  
8 think it's like, well, we're holding this student hostage  
9 in a bad situation for six months while we're waiting for  
10 an assessor. I think that when you have that kind of  
11 agreement between the District and the students -- or the  
12 parents, I think generally they're both working together to  
13 try to fix whatever the problem is. So that's why again, I  
14 would appreciate more leniency when we're caught in that,  
15 in that situation. I think it comes up too in particular  
16 with some of the more difficult cases where you have a  
17 student who may require an independent assessor with a  
18 skillset to deal with kids who have very unusual  
19 disabilities too. And so that's where I would favor the  
20 leniency in particular.

21 **PRESIDING JUDGE VARMA:** Any further comments? Ms. Leon,  
22 did you wish to make a proposal, a formal proposal and how  
23 would you word it?

24 **MS. LEON:** Sure. I would recommend that OAH issue  
25 additional guidance regarding the standard for good cause  
26 in relation to joint requests for continuances.

27 **PRESIDING JUDGE VARMA:** Anybody second the recommendation?

28 **FEMALE MEETING MEMBER:** I'll second.

1       **PRESIDING JUDGE VARMA:** So the current recommendation is  
2 that -- is that OAH issue additional guidance regarding  
3 standard for good cause in relationship to joint requests  
4 for continuances. Okay, any discussion on the way the  
5 recommendation is phrased, the current recommendation  
6 before we vote? Oh, okay. Let's go ahead. It's been  
7 seconded so we'll go ahead and vote. We'll take the vote  
8 in Northern California first. All in favor? That's  
9 everyone again, so all in favor in Northern California, no  
10 abstentions and no no votes. Southern California, Judge  
11 Castillo?

12       **PRESIDING JUDGE CASTILLO:** With regard to Ms. Leon's  
13 motion, all in favor? All votes affirmative for the  
14 motion.

15       **MR. RUDERMAN:** I'm going to make a second motion on this.

16       **PRESIDING JUDGE VARMA:** Okay. So that recommendation has  
17 passed and OAH will consider it. Mr. Ruderman?

18       **MR. RUDERMAN:** I would like to move that when the parties  
19 submit a joint motion for a continuance, that presumption  
20 be that there is good cause, that OAH regard that, that  
21 presumptively there's good cause for a continuance, just  
22 based on the fact that both parties are submitting the  
23 motion jointly.

24       **PRESIDING JUDGE VARMA:** So Mr. Ruderman's proposal is that  
25 when the parties submit a joint request for a continuance  
26 OAH -- let me rephrase it. When the parties continue --  
27 submit a joint request for a continuance, there be a  
28 presumption that there's good cause for the continuance.

1 Is that correct?

2 **MR. RUDERMAN:** That's correct.

3 **PRESIDING JUDGE VARMA:** Okay. Any comments on Mr.  
4 Ruderman's proposal?

5 **PRESIDING JUDGE CASTILLO:** We have a comment down here.

6 **MR. ECONOMOU:** This is Eli Economou. It seems like that  
7 subsumes the first motion, to me anyway. Do we need both  
8 of them or are we just -- is the procedure to just vote on  
9 both of them and then make that determination later?

10 **MS. LEON:** Can I respond?

11 **PRESIDING JUDGE VARMA:** Yes, Ms. Leon.

12 **MS. LEON:** I believe the first motion seeks clarification  
13 from OAH. The second motion seeks an action farther than  
14 just clarification by OAH. It would be the adoption of a  
15 new procedure or a new -- yeah, a new practice. Is that --

16 **PRESIDING JUDGE VARMA:** Okay. Any further comments? Do  
17 you believe that they're sufficiently different, Mr.  
18 Ruderman?

19 **MR. RUDERMAN:** I agree with Ms. Leon's interpretation of  
20 that.

21 **PRESIDING JUDGE VARMA:** Okay. Anybody second Mr.  
22 Ruderman's proposal? Ms. Leon seconds the proposal. We'll  
23 go ahead and take the vote and then depending upon the  
24 vote, if OAH needs to respond, we'll respond to both  
25 proposals. That's fine. Mr. Ruderman, do you want to  
26 rephrase -- phrase your recommendation again?

27 **MR. RUDERMAN:** Basically that we're requesting that OAH,  
28 when there's a joint request for a continuance by both

1 parties, that such a request, there would be a presumption  
2 that good cause exists for a continuance. Now, I recognize  
3 ultimately it's empathy. I made that statement, that's the  
4 motion and just to make a comment, I recognize that  
5 ultimately it's at the discretion of the Judge, but we're  
6 requesting that OAH adopt that policy or look at it from  
7 that position.

8 **PRESIDING JUDGE VARMA:** Okay. And you still second it, Ms.  
9 Leon? Okay. Let's go ahead and take a vote in Northern  
10 California. All in favor? Ms. Leon and Mr. Ruderman. All  
11 opposed? Ms. Fattig. We have two in favor, one opposed  
12 and three abstaining.

13 **MS. BEALL:** Yes.

14 **PRESIDING JUDGE VARMA:** Okay. Ms. Beall, Ms. Villarreal  
15 and Ms. Mulhollen abstain. In Southern California?

16 **PRESIDING JUDGE CASTILLO:** In Southern California, all in  
17 favor of Mr. Ruderman's motion? We have one, two, three,  
18 four, five in favor. All opposed? We have two opposed and  
19 one abstention. Do you have the names, Mr. Mann?

20 **JUDGE MANN:** Who was the abstention?

21 **PRESIDING JUDGE VARMA:** Can we --

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

23 **PRESIDING JUDGE VARMA:** We'll have a roll call on those in  
24 favor, those opposed and those abstained.

25 **PRESIDING JUDGE CASTILLO:** Mr. Mann, Judge Mann?

26 **JUDGE MANN:** Yes. Here we had Mr. Economou, Mr. German,  
27 Ms. Hernandez and Ms. Zambrano as ayes. In opposition were  
28 Mr. Siembieda and --



1 item, it's my understanding that Mr. Ruderman would like to  
2 reopen the last item for one more comment. So we'll go  
3 ahead and let Mr. Ruderman comment on continuances of OAH  
4 matters.

5 **MR. RUDERMAN:** (Inaudible) continuance been granted. Well,  
6 I asked if I could have an off the meeting comment with Bob  
7 and Peggy about just providing some additional -- I wanted  
8 to make a comment about it and I was told I can't do that.  
9 I have to do it in the meeting. So what I would like to  
10 point out and one of the reasons I think the presumption  
11 should be looked at seriously by the Judges, is I think  
12 there's two, at times competing principles at stake with  
13 regard to continuances. One is the notion that the law  
14 wants these cases to be resolved quickly because they  
15 involve children and their needs are changing and so  
16 there's the speedy resolution. But there's a second  
17 principle in the law which I think actually supersedes the  
18 first one that I just mentioned, which is that the notion  
19 that the parties will work together and cooperate and  
20 there's even statutory authority saying, you know, Judges  
21 are to encourage parties to reach settlement agreements.  
22 And I think where you have a situation where the parties  
23 are jointly asking for something, I think that second  
24 principle supersedes the first principle because I think  
25 the intent of the law actually, and I think is the notion  
26 that when the parties work together the kids' needs are  
27 being met. And so I don't think the speed of resolution is  
28 as critical when you have both parties saying we want to do

1 something because I think that first -- that principle of  
2 the parties working together, which is the whole spirit of  
3 the IDEA should take precedence. That's my two cents.

4 **PRESIDING JUDGE VARMA:** Okay. Any comments? Any further  
5 comments? Okay. So the two proposals remain as they are  
6 and we'll go ahead and respond to those.

7 **MR. RUDERMAN:** Okay, thank you.

8 **PRESIDING JUDGE VARMA:** Thank you. The next item on the  
9 agenda is 3(i), training of Administrative Law Judges.  
10 This was an item by Mr. Siembieda so I'm going to let him  
11 go ahead and address it.

12 **MR. SIEMBIEDA:** Okay, thank you. I think I and J go  
13 together. We've had some situations recently in our area  
14 with newer ALJs and mediators and we have some concerns  
15 about the training or the knowledge of both process and  
16 content. Situations are taking much longer than they used  
17 to take, which eats up a lot of time and obviously finances  
18 that go into it where hearings are being doubled in the  
19 amount of time because the process doesn't seem to be  
20 managed very effectively. The same thing with mediation  
21 where we're coming into situations where we have mediators  
22 that are sent down to help us and work with us and in fact,  
23 we're able to resolve the issues without their involvement  
24 because they're not very effective in helping us to talk  
25 about or share the issues. And so there's some concerns  
26 about whether or not we even need them in the room  
27 sometimes because while they sit out and wait for us, we  
28 can manage our agreements without their involvement. And

1 so kind of a question, I guess and a curiosity about what  
2 type of training our new ALJs or new mediators receive  
3 related to the process of working with school districts and  
4 content, knowledge related to IDEA and Special Education  
5 law.

6 **MS. ZAMBRANO:** Would that include parents too, working with  
7 parents or just --

8 **MR. SIEMBIEDA:** Yeah, that could -- yes, that would include  
9 working with parents too. I mean, it's all part of the  
10 process, yes. Sorry, I didn't --

11 **MS. ZAMBRANO:** It's nice to hear that.

12 **MR. SIEMBIEDA:** Yeah, I appreciate that.

13 **MS. ZAMBRANO:** That we're part of the process.

14 **MR. SIEMBIEDA:** Yes, I mean it's all part of the process.  
15 I didn't mean to exclude anybody.

16 **MS. ZAMBRANO:** That's okay.

17 **MR. SIEMBIEDA:** Sorry if it came out that way.

18 **PRESIDING JUDGE VARMA:** And was that Ms. West-Hernandez  
19 that was just speaking?

20 **MS. WEST-HERNANDEZ:** Ms. Zambrano.

21 **MS. ZAMBRANO:** Ms. Zambrano. I just --

22 **PRESIDING JUDGE VARMA:** Okay, sorry. I'm trying to  
23 remember all the faces down there. So you wish to combine  
24 item I and J together? It's -- you're really combining the  
25 two items?

26 **MR. SIEMBIEDA:** Yeah, I think it probably can be  
27 summarized, you know, the same way. I'm just not sure  
28 about what the process for training new folks is. I'd like

1 to be educated on that and then see if there's anything  
2 that we would need to maybe make a recommendation on  
3 differently to help them or improve that quality as we move  
4 forward.

5 **PRESIDING JUDGE VARMA:** Any of the Committee members wish  
6 to comment on items 3(i) and (j)? No, okay. To the extent  
7 that it's a question that is being asked, what I can say  
8 for OAH is that all of our training is set out by statute  
9 and regulations. And it is set out in the contract with  
10 the Department of Education. So we have mandatory  
11 trainings that we're required to provide. All of that  
12 information is available from OAH. To the extent that you  
13 wish to make a proposal or recommendation, the Committee is  
14 open to hearing any recommendation that you'd like to make.

15 **FEMALE MEETING MEMBER:** There was, I think, I believe last  
16 year potentially we received a list of the trainings and  
17 the dates that the ALJs went through there. Is it possible  
18 to receive that list of trainings?

19 **PRESIDING JUDGE VARMA:** Yes, I believe anybody can contact  
20 us and ask us for that information. And we are -- we have  
21 it, we've provided the CDs, so it is available.

22 **FEMALE MEETING MEMBER:** Okay. So if we sent you an email  
23 personally you could send it to us or how does that process  
24 --

25 **PRESIDING JUDGE VARMA:** Anything -- yeah, any written  
26 request that you would --

27 **FEMALE MEETING MEMBER:** Okay.

28 **PRESIDING JUDGE VARMA:** -- like to send us.

1       **PRESIDING JUDGE CASTILLO:** Okay. We have a question down  
2 here. Ms. Zambrano?

3       **MS. ZAMBRANO:** Yes, just to -- well, I agree with you. I  
4 mean, I would like to know the process of how they're --  
5 the training, how does it work, that they have to  
6 participate or have a certain amount of training so that  
7 they can be the mediators of the -- how long do they have  
8 to go through the training before they can be part of the  
9 mediation process and all of that?

10       **PRESIDING JUDGE VARMA:** For the --

11       **MS. ZAMBRANO:** I'd want to see those.

12       **PRESIDING JUDGE VARMA:** Right. For the mediation process,  
13 I can tell you in addition to the internal training that we  
14 provide, which is coaching and observation, we -- every one  
15 of our ALJs and Pro Tems that does mediations has a  
16 certificate from a recognized course of at least 40 hours  
17 of mediator training.

18       **MS. ZAMBRANO:** Is there a number for the hours of coaching  
19 too or --

20       **PRESIDING JUDGE VARMA:** It's a -- the mediators are  
21 required to observe other experienced mediators. When they  
22 go out and do their mediation a Presiding Judge goes and  
23 observes them and then it's a case by case. We also have  
24 times when folks want to refresh their skills and they will  
25 go observe other mediators. We have ongoing training every  
26 year. We're also required to provide training by contract  
27 for ALJs and mediators in both areas every year.

28       **MS. HATCH:** I have a question.

1 **PRESIDING JUDGE CASTILLO:** A question from Ms. Hatch.

2 **MS. HATCH:** Is there the same process for an ALJ before  
3 they preside over a hearing?

4 **PRESIDING JUDGE VARMA:** Yes, there's a whole --

5 **MS. HATCH:** Is there --

6 **PRESIDING JUDGE VARMA:** -- training process for ALJs before  
7 they preside over a hearing as well. The contract with  
8 CDE, which is also incorporated into the regulations sets  
9 out all the different areas in which they must receive  
10 training. And it covers everything from how to conduct a  
11 proceeding to substantive areas of the law and disability  
12 awareness.

13 **MS. HATCH:** Is there also a process of where before an ALJ  
14 presides over a hearing that they go and watch other ALJs  
15 do it or kind of like with the mediator process?

16 **PRESIDING JUDGE VARMA:** Yes. They have to go and observe a  
17 hearing, at least one hearing and within our own system we  
18 do observations as Presiding Judges to see how the process  
19 is going.

20 **MS. HATCH:** Okay.

21 **PRESIDING JUDGE CASTILLO:** Do you have another question?

22 **MR. SIEMBIEDA:** And so for clarification, I understand we  
23 can get a list of the trainings that have occurred. We  
24 need to contact or email you directly, Judge Varma, in  
25 order to do that?

26 **PRESIDING JUDGE VARMA:** Yes. Just, it doesn't have to be  
27 me. You can just address it to the Special Education  
28 Division in writing up here to Sacramento. You can send it

1 by mail. You can fax it to us. You can email it to us in  
2 our e-filing email address. It's just at this moment I  
3 can't go through and give you all the breakdown because  
4 it's a substantial number and I don't have it readily  
5 available. Okay. The other thing that I would recommend  
6 for anyone and especially anyone listening over the  
7 Internet is our website has a lot of this information.  
8 There is a resource section. There's a dashboard section  
9 that lists a lot of the data that we collect. We collect a  
10 lot of data in this program. So if there's no proposal on  
11 these two items, 3(i) and (j) and we are -- if we have  
12 discussed enough, I'd like to move to the next item. Any  
13 further comments, questions? No. Okay. The next item is  
14 also proposed by Mr. Siembieda, so I will let him address  
15 it. It's a designation of ALJs for mediations and  
16 hearings.

17 **MR. SIEMBIEDA:** So kind of a continuation then of the last  
18 few items, I will make a proposal here. Well, I think our  
19 experience has been pretty clear that some folks are much  
20 more effective in the mediation process and some are much  
21 more effective in the hearing process. And so we would  
22 make a proposal -- I would make a proposal that OAH  
23 designate specific folks just for mediation and specific  
24 folks just for due process hearings.

25 **PRESIDING JUDGE VARMA:** Anybody wish to comment or discuss  
26 this before we ask for a second on the proposal?

27 **FEMALE MEETING MEMBER:** Can we have a description or an  
28 overview of how it currently -- how Judges are currently

1 assigned mediation and hearings?

2 **PRESIDING JUDGE VARMA:** Sure. It's what we call  
3 operational needs, so there is no set pattern as to which  
4 Judges do which mediations or hearings. We try and  
5 distribute the workload amongst all the Judges as evenly as  
6 we possibly can. We will take geographic considerations --  
7 geographic situations into consideration. And by that I  
8 mean to the extent that each local office can handle the  
9 caseload on the calendar within -- with their own folks.  
10 We try and do that, but as we need to, we will move Judges  
11 from north to south in order to cover the calendar. So  
12 there is no specific designation that certain ALJs will do  
13 certain hearings and certain ALJs will do mediations.

14 **FEMALE MEETING MEMBER:** What about your Pro Tems?

15 **PRESIDING JUDGE VARMA:** Pro Tems are only allowed to do  
16 mediations. They are not allowed to do hearings, so, you  
17 know, in calendaring for priority purposes, hearings  
18 obviously always take priority because those are multiple  
19 day events and then as the calendar works out, if we need  
20 the assistance of Pro Tems we will get that assistance. I  
21 think in past Advisory Committee Meetings we have updated  
22 the community on the fact that we've added Administrative  
23 Law Judges in order to cut down on the use of Pro Tems and  
24 we continue to work on that. So, but we do need Pro Tems  
25 from time to time to cover the calendar. Any other  
26 comments?

27 **MR. ECONOMOU:** A question?

28 **PRESIDING JUDGE CASTILLO:** We have a question down here.

1 **PRESIDING JUDGE VARMA:** Yes?

2 **MR. ECONOMOU:** Do you have a criteria in mind or some sort  
3 of information in mind to use in order to determine -- I  
4 don't necessarily disagree with the recommendation. I just  
5 -- I don't know how they would make that determination.

6 **PRESIDING JUDGE VARMA:** That was Mr. Economou asking the  
7 question?

8 **MR. ECONOMOU:** Yeah, sorry. It's Mr. Economou.

9 **PRESIDING JUDGE VARMA:** Okay, thank you.

10 **MR. SIEMBIEDA:** No, not off -- not directly. I thought I  
11 would leave that up to the experts who work in the office  
12 to kind of kick that one around on how they would make that  
13 decision.

14 **MR. ECONOMOU:** Okay.

15 **PRESIDING JUDGE VARMA:** So as I understand the proposal,  
16 currently it is that OAH designate certain Administrative  
17 Law Judges to do mediations only and certain Administrative  
18 Law Judges to do hearings, which I assume would also  
19 include Pre-Hearing Conferences. Is that correct?

20 **MR. SIEMBIEDA:** Yes.

21 **PRESIDING JUDGE VARMA:** Anybody second the proposal? There  
22 are no seconds in Northern California. Any second in  
23 Southern California?

24 **PRESIDING JUDGE CASTILLO:** None in Southern California.

25 **PRESIDING JUDGE VARMA:** So the proposal is not seconded.  
26 OAH will not take this proposal up for vote. Anything  
27 further on this item? Anything from the community?

28 **FEMALE SPEAKER:** No.

1       **PRESIDING JUDGE VARMA:** Okay. The last item under this  
2 section is 3(1), process for updating posted orders and  
3 this was requested by Ms. Adams, so I will let her address  
4 it.

5       **MS. ADAMS:** Yes. It's just really starting out as a  
6 question, whether or not OAH has a process for updating  
7 orders that are posted, such as when there's been a  
8 successful interlocutory appeal, such as a motion for stay  
9 put. I recently became aware of another student attorney  
10 who was able to successfully overturn an order regarding  
11 stay put and I think it's great case law. And I think  
12 particularly for parents who don't have access to Lexis or  
13 Westlaw. You know, the information may not be as readily  
14 available if it's not posted. So I've never really seen an  
15 order posted or a designation on an order that it was  
16 overturned or anything as is done for decisions or upheld,  
17 either way, so I just didn't know if there was a process  
18 and if so, what is that process?

19       **PRESIDING JUDGE VARMA:** Okay. Any comments? Any further  
20 questions? Okay. So I think it's a good idea for me to  
21 expand on this question a little bit, Ms. Adams, so that  
22 the community understands. This question that Ms. Adams  
23 has raised concerns orders and it came about because she  
24 found a stay put order recently that had been overturned by  
25 a District court while the case was still pending with OAH.  
26 So the question is, what is the process for OAH to stay up  
27 to date on those types of items and update the website.  
28 With respect to orders, what I can tell you is if OAH is

1 aware that something has been appealed, then we will try  
2 and track it. There's been, in prior cases that in my  
3 memory I am aware where a party has asked for us to stay  
4 our proceedings while they pursue an appeal of an order  
5 during the case. So that's one way that we've been made  
6 aware or if the District court issues an order that asks us  
7 to stay our proceedings while they consider something.  
8 That's another way we've made aware of. In the case that  
9 you are discussing, you did forward the order to me and  
10 neither of the parties made us aware that they were  
11 actually appealing the stay put order. We were not aware  
12 of that until I got your copy of the District court's order  
13 on the stay put. And soon thereafter one of the parties  
14 did submit the District court's order. So at that point  
15 the original stay put order had not been posted to the  
16 website and once it was posted, we did update it and  
17 currently on the website you will find the stay put order  
18 and the case, as well as the link, showing that it's been  
19 overturned by the District court and that document can then  
20 be accessed through that link. So for orders that are  
21 given by District court or other Appellate courts, during  
22 the proceeding the only way for OAH to know about it is if  
23 the party alerts us that something has been taken on  
24 appeal, which is different than the process for decisions.  
25 Once we issue a decision, if we get a request, as the  
26 community is aware, we have forms available for asking for  
27 the transcript or the recording of the hearing. And part  
28 of that asks you to tell us if you're filing an appeal and

1 once we are aware of that, we do track that. We do send  
2 out a letter to the parties saying please keep us informed  
3 of the final outcome of this case. So it is one of the  
4 things that CDE requires us to track and we do track that  
5 for decisions. It's a lot more difficult for orders in the  
6 middle of a case if we are not aware that something's been  
7 appealed. But once we do become aware, we will track it  
8 and we will post it as we did in this case. So that's the  
9 answer to the question. Do you have a proposal or does  
10 anybody have a comment before their proposal, if there is  
11 one? Any comments? No, okay. Do you have a proposal?

12 **MS. ADAMS:** I really don't because I think you answered the  
13 question. The only thing I could consider proposing is  
14 that the process is posted online. I wasn't aware of the  
15 process and it is somewhat of an unusual situation, but I  
16 think helpful information for the community.

17 **PRESIDING JUDGE VARMA:** Okay.

18 **MS. ADAMS:** How would people know about the process, that  
19 they should initiate contacting OAH. I mean --

20 **PRESIDING JUDGE VARMA:** Can you word as the way you would  
21 want the proposal to read? Or I can try.

22 **MS. ADAMS:** Yeah, I'll defer to you actually.

23 **PRESIDING JUDGE VARMA:** Okay. And is this just for orders  
24 or is this for decisions as well?

25 **MS. ADAMS:** No, I think it's just for orders because I  
26 believe the decision aspect is pretty well covered.

27 **PRESIDING JUDGE VARMA:** Ms. Adams, if I understand Ms.  
28 Adams' proposal it is that OAH post on its website the

1 process by which it tracks any orders that may be appealed  
2 during the pendency of a case. Is that correct?

3 **MS. ADAMS:** Yes, that's correct.

4 **PRESIDING JUDGE VARMA:** Anybody wish to second the  
5 proposal?

6 **MS. MULHOLLEN:** Second.

7 **PRESIDING JUDGE VARMA:** Ms. Mulhollen has seconded it. Any  
8 further comments before we take a vote? Okay, no comments.  
9 Since the proposal made is in Southern California, we'll  
10 start there. Judge Castillo, would you take a vote for us  
11 and a roll call?

12 **PRESIDING JUDGE CASTILLO:** All in favor of -- all in favor  
13 of Ms. Adams' proposal, please raise your hand. All in  
14 favor in Southern California.

15 **PRESIDING JUDGE VARMA:** In Northern California, all in  
16 favor of Ms. Adams' proposal? Every member is in favor in  
17 Northern California as well. OAH will respond to the  
18 proposal. Okay. We are onto public comments. We did  
19 receive one email during the discussions that were ongoing  
20 and that's not it. Where did I lose it? Here it is, I  
21 have it. The comment or the public member had three  
22 comments. One of them did concern the Special Education  
23 Guide to -- The Guide to Understanding Special Education,  
24 however we had moved on from that item. We were several  
25 items down so I reserved it to read at this time. I will  
26 go ahead and read the comment in its entirety. Comment on  
27 Committee Membership. Currently the membership is, and the  
28 first comment, four attorneys for Districts, three District

1 employees that include a Special Ed Director and a SELPA  
2 Director, three attorneys for students, one Parent Training  
3 Center employee, one parent. The membership cannot  
4 possibly support the parents' perspective and view if we  
5 are not represented properly. Dual parents do not reflect  
6 the true unattached parent view and experience with OAH and  
7 the Special Ed System. I ask that you please consider  
8 revising the membership or add to the unattached parent  
9 membership. The second comment, when you are revising the  
10 Guide to Understanding Special Education and Due Process  
11 Hearings and Frequently Asked Questions, please keep in  
12 mind the importance not to leave out valuable information  
13 for the sake of cutting down the number of pages. Going  
14 from 113 pages to 40 some odd pages has me very worried  
15 that valuable information is being lost to the public. We,  
16 parents, are uninformed enough without this document being  
17 "dumbed down," in quotations, "dumbed down," for lack of  
18 better words to the point we are not getting the  
19 information needed to advocate for our kids effectively.  
20 The third comment, speaking as someone who attends the  
21 Advisory Commission on Special Education meetings, to my  
22 knowledge they are not discussing any items that will  
23 relate back to OAH. I think it would be good for OAH  
24 Special Education Advisory members to attend their meetings  
25 to make that connection between these two important  
26 committees. You might also want to check if the statewide  
27 Special Education task force will still be meeting. This  
28 body kind of overrode the Advisory Commission on Special

1 Education and came up with proposal on Special Education  
2 that the governor is now looking at. That is the public  
3 comment. Any other public comment?

4 **FEMALE SPEAKER:** No other public comment at this time.

5 **PRESIDING JUDGE VARMA:** Any other public comment in  
6 Northern California? No. Southern California, any public  
7 comments?

8 **PRESIDING JUDGE CASTILLO:** None.

9 **PRESIDING JUDGE VARMA:** Okay. The last item on the agenda  
10 before adjournment is the next Advisory Committee meeting  
11 date. OAH is proposing Friday, April 22<sup>nd</sup>, 2016. If we  
12 could take a moment and look at our calendars, see if  
13 anybody has a disagreement with that date.

14 **MALE MEETING MEMBER:** Ten a.m.?

15 **PRESIDING JUDGE VARMA:** Ten a.m., yes. California --

16 **FEMALE MEETING MEMBER:** It's a religious holiday. That's  
17 my only comment.

18 **PRESIDING JUDGE VARMA:** Okay. Any --

19 **MALE MEETING MEMBER:** What did you call it? It's Good  
20 Friday?

21 **FEMALE MEETING MEMBER:** Yes.

22 **PRESIDING JUDGE VARMA:** Any --

23 **FEMALE MEETING MEMBER:** It's Earth Day.

24 **PRESIDING JUDGE VARMA:** -- objections to that date in  
25 Northern California, April 22<sup>nd</sup>, 2016? Any objections to  
26 April 22<sup>nd</sup>, 2016 in Southern California by the Committee  
27 members? No objection? Okay. I propose that we go ahead  
28 and set the next Advisory Committee meeting for April 22<sup>nd</sup>,

1 2016, 10:00 a.m. to 1:00 p.m. and OAH will send out the  
2 necessary agenda items and responses to the proposals, as  
3 well as a summary of this meeting and we will post it on  
4 our website. And with that, we are at adjournment stage,  
5 so thank you all for coming. I appreciate your cooperation  
6 and your thoughts and input and we'll see everybody in  
7 April. Thank you.

8 **FEMALE MEETING MEMBER:** Thank you.

9 **PRESIDING JUDGE CASTILLO:** Thank you down here.

10 (Special Education Advisory Committee Meeting Adjourned)

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                  This is to certify that I transcribed the foregoing pages 1 to 47 to the best of my ability from an audio recording provided to me by Office of Administrative Hearings, Special Education Advisory Committee.

                  I have subscribed this certificate at Elk Grove, California, this 29th day of October, 2015.

*Karin R. Lewis*

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