

OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

NOVEMBER 9, 2012  
10:00 A.M. - 1:00 P.M.

JOINT SESSION

SACRAMENTO, CALIFORNIA  
VAN NUYS, CALIFORNIA

Official Transcriber: Corinne Yanosy

COMMITTEE MEMBERS PRESENT:

NORTHERN CALIFORNIA

TRACI BEAN  
MARGARET BROUSSARD  
MARCY GUTIERREZ

MARY PEITSO  
SUSIE MALLOY  
KENT REZOWALLI  
CATHERINE SHERMAN  
LOREN SOUKUP

SOUTHERN CALIFORNIA

MARGARET DALTON  
ELIAS ECONOMOU  
CAROL LALLY  
MIHO MURAI  
NINA BRY  
STEVE COCHRAN  
MARGARET ADAMS

**COMMITTEE MEMBERS NOT PRESENT:**

AMY FOODY  
SUNDEE JOHNSON  
COLE DALTON  
MAUREEN DOLAN  
JESSICA LEAVITT  
SAM NEUSTADT  
BLANCA SIEBELS

**ALSO PRESENT:**

JUDGE JUDITH KOPEK, Administrative Law Judge  
JUDGE BOB VARMA  
JUDGE RICHARD BREEN  
JUDGE JUNE LEHRMAN  
JUDGE THERESA RAVANDI

<u>INDEX</u>	<u>PAGE</u>
Call to Order and Instructions .....	4
Introductions .....	6
Public Comments .....	88
Adjournment .....	94
Transcriber's Certification .....	95

PROCEEDINGS

1  
2 ADMINISTRATIVE LAW JUDGE KOPEK: Good morning. It  
3 is my pleasure to welcome you to the fall meeting of the  
4 Office of Administrative Hearings, Special Education Advisory  
5 Committee. I am Judith Kopec the Special Education Division  
6 Presiding Administrative Law Judge here in Sacramento. And  
7 we are also linked via video conference to our Southern  
8 California Committee that is in Van Nuys. It is great having  
9 you all here.

10 This is the beginning, for some of you, of the two-  
11 year term and the beginning of the second of a two-year term  
12 for those of you who are returning. At this point what I'd  
13 like to do is provide a brief overview of the Advisory  
14 Committee process. The agenda, we will go down in the order  
15 of the agenda.

16 For this meeting's agenda all of the items were  
17 proposed by the Office of Administrative Hearings, so I will  
18 present information on the item. Then the Advisory Committee  
19 members will discuss the item as you feel necessary.

20 If you have any recommendations, in terms of  
21 recommends to the Office of Administrative Hearings, in terms  
22 of changing of the process, or any additional things  
23 pertaining to the item, you can certainly -- members can  
24 propose them, then discuss them, and then vote.

25 We like to keep things fairly informal. We do not

1 follow the Robert's Rules of Order, but in order so that  
2 everyone can hear and we can take notes and get a clear  
3 transcript, we like to make sure that we have one person  
4 talking at a time.

5 I will do my best to make sure that every member  
6 has an opportunity to speak. After the members speak, if we  
7 have any public comment coming in through the web, we will  
8 take those comments as well. And then on each recommendation  
9 we take a vote in Northern California and a vote in Southern  
10 California.

11 At this time in the past we have selected chairs  
12 for both the Northern group and the Southern group. At this  
13 time, in terms of Northern California, is there anyone who  
14 would volunteer to be the chair? If no one is willing to do  
15 that, if there's no objection, I am more than happy to act as  
16 chair. But I don't want to step on anyone's toes.

17 UNIDENTIFIED FEMALE: I think that sounds great.

18 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. No  
19 objection, so I will serve as chair. Thank you very much. I  
20 appreciate your confidence in that regard.

21 And in Southern California, is there anyone that  
22 would like to be the chair?

23 ADMINISTRATIVE LAW JUDGE BREEN: Members, anyone  
24 want to take it? No --

25 ADMINISTRATIVE LAW JUDGE KOPEC: All right. Would

1 there be any objection to Judge Breen being the chair for  
2 Southern California?

3 UNIDENTIFIED FEMALE: Not at all.

4 ADMINISTRATIVE LAW JUDGE BREEN: Okay, folks.

5 ADMINISTRATIVE LAW JUDGE KOPEC: All right. Judge  
6 Breen --

7 ADMINISTRATIVE LAW JUDGE BREEN: I'll do my best.

8 ADMINISTRATIVE LAW JUDGE KOPEC: Similarly, we need  
9 to have note takers in each group. Is there anyone in  
10 Northern California who wishes to take on that task? There  
11 be any objection to having Administrative Law Judge Ravandi  
12 here in Sacramento take notes for Northern California?

13 MULTIPLE SPEAKERS: None.

14 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Thank you  
15 very much. And in Southern California, would anybody like to  
16 take notes for Southern Cal?

17 ADMINISTRATIVE LAW JUDGE BREEN: Yes, and Ms. Murai  
18 is indicating she would like to do so.

19 ADMINISTRATIVE LAW JUDGE KOPEC: All right, Ms.  
20 Murai. That has worked out. I appreciate you stepping up  
21 and being willing to do that once again for us. At this time  
22 what I would like to do is have a brief introduction of the  
23 committee members. We have three returning members here in  
24 Northern California, and six new members.

25 So let's start with Ms. Soukup -- would you like --

1 just introduce yourself, and to just provide a brief  
2 description of your connection to special education in this  
3 committee.

4 MS. SOUKUP: Okay. My name is Loren Soukup and I'm  
5 Assistant General Counsel at School and College Legal  
6 Services in Santa Rosa, California. And I -- part of the  
7 work that I do is special ed and representing school  
8 districts.

9 MS. BROUSSARD: I'm Margaret Broussard, I am an  
10 attorney representing parents and students with disabilities.  
11 I am also the parent of an adult child with a disability.

12 MS. BEAN: And I'm Tracy Bean, and I am a Regional  
13 Director for Total Education Solutions, which is statewide  
14 NPA. I'm also a speech pathologist and a mom of a child on  
15 an IEP.

16 MS. SHERMAN: I'm Cathy Sherman, I am a parent of  
17 three children with disabilities, and I'm also a special  
18 education teacher.

19 MS. PEITSO: I'm Mary Peitso, I'm a mom of a son  
20 with a disability and I'm also an advocate for other parents.

21 MR. REZOWALLI: Ken Rezowalli, in the director of  
22 the Tri-Valley SELPA, and also the parent of an adult child  
23 with disabilities.

24 MS. MALLOY: Susie Malloy, returning member.  
25 Parent of a daughter with disabilities.

1 MS. GUTIERREZ: And I'm Marcy Gutierrez (phonetic),  
2 I'm an attorney that represents school districts.

3 ADMINISTRATIVE LAW JUDGE KOPEC: Terrific. Thank  
4 you all very much. And in Southern California?

5 ADMINISTRATIVE LAW JUDGE BREEN: Do you want to  
6 start, (overlapping) --

7 ADMINISTRATIVE LAW JUDGE KOPEC: Judge Breen, I'll  
8 leave it up to you to get them started down there.

9 ADMINISTRATIVE LAW JUDGE BREEN: Let's start with  
10 Ms. Johnson.

11 MS. JOHNSON: Yes, I'm Cindy Johnson, I'm an  
12 attorney at Atkinson Andelson, and we represent school  
13 districts in special education matters.

14 MS. LALLY: I am Carol Lally (phonetic), and I'm a  
15 parent of a child with special needs.

16 MS. BRY: Hi, I'm Nina Bry (phonetic), I represent  
17 students and parents.

18 MR. COCHRAN: I'm Steve Cochran, I am a former  
19 special education teacher, special education professor now,  
20 and I have a child with special needs.

21 MS. ADAMS: I'm Margaret Adams and I'm an attorney  
22 that represents students with disabilities and I also have an  
23 adult child that has disabilities and I am (inaudible).

24 MR. ECONOMOU: Eli Economou, I'm an attorney at  
25 Augustin Egelsee we represent students with disabilities.

1 MS. DALTON: I'm Cole Dalton (phonetic), the  
2 founder of Dalton Law Group. We represent school districts.  
3 I also have a couple of family members with special needs.

4 ADMINISTRATIVE LAW JUDGE BREEN: Thanks. And  
5 that's everybody.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Terrific. Well,  
7 this is a wonderful group of individuals with a broad  
8 experience in special education and the work of the Office of  
9 Administrative Hearings, and I'm really I'm really looking  
10 forward to working with you for the next year or two,  
11 depending upon whether you're a returning member or not.

12 At this time I would just like to introduce the  
13 employees of OAH who are with us here in Sacramento. And we  
14 have Presiding Administrative Law Judge Bob Varma from our  
15 Sacramento Office, and Administrative Law Judge Terry  
16 Ravandi, who is our note taker. And Judge Breen?

17 ADMINISTRATIVE LAW JUDGE BREEN: I'm presiding  
18 Judge Breen for the Van Nuys office and with me is one of my  
19 Administrative Law Judges, Judge Lehrman.

20 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Terrific.  
21 That takes care of the basic introductory and some of the  
22 housekeeping items on our agenda. The next thing I would  
23 like to turn to is a very brief discussion of the Open  
24 Meeting Act.

25 This hearing must comply with the Open Meeting Act.

1 A copy of the Attorney General's handy guide to the Open  
2 Meeting Act, and a copy of the current statutes comprising  
3 the Open Meeting Act was sent to all the members and is  
4 available here for the public as well.

5 I encourage members, if you haven't done so  
6 already, to read through the handy guide. I just want to let  
7 you know that although it is dated 2004 from the AG's office,  
8 this is the current version of this, and the information is  
9 still current. But I did attach to it the current statutes  
10 so that you have those as well, but there are no substantive  
11 changes.

12 And as I indicated, OAH is responsible for making  
13 sure that we comply with the Open Meeting Act, which we have  
14 done, in terms of notice and having signage, and making the  
15 public literally -- the meeting open to the public. And it's  
16 -- each member of the committee, it's your responsibility to  
17 make sure that you comply with the provisions of the Open  
18 Meeting Act.

19 There is one provision in particular that I want to  
20 bring to your attention, and it has to do with serial  
21 meetings, and this section is discussed at page five of the  
22 Act, of the handy guide that I sent you. And the provision,  
23 in terms of serial meetings, basically would preclude a  
24 member from -- from members from engaging in conversations  
25 and -- when this has come up, in terms of legal cases, it

1 comes up with things like either a telephone trace situation,  
2 or emails, where one member may contact another member  
3 perhaps to discuss an agenda item, or something about the  
4 committee, and then that member then talks to another member.  
5 So that in each interaction you obviously didn't have a  
6 quorum, but the chain eventually touches upon a quorum  
7 (inaudible) 51 percent of the members. And that is  
8 specifically precluded.

9           Again, I've never had any concern that that was  
10 happening with any members here, but it is -- in terms of the  
11 Open Meeting Act and, practically speaking, what types of  
12 things would perhaps be of interest to you to be aware of.

13           And I just want to make it clear that in terms of  
14 conventions, because I know each of you -- you know, we're  
15 all being members of the special education community, there  
16 may be conferences or trainings that you may happen to see  
17 each other at. Again, as long as you are not there talking  
18 about business having to do with items on the agenda, or  
19 things that should be on the agenda, there's no concern at  
20 all.

21           If you have any questions or concerns after you  
22 read it, or at any time while you're serving on the  
23 committee, please contact me. And although, obviously, I  
24 can't provide you legal advice, on behalf of OAH, and we're  
25 responsible to making sure that everybody complies, I could

1 certainly provide input to any questions that you may have.

2 At this point, does anyone have any questions, or  
3 any further discussion on the Open Meeting Act in Northern  
4 California? And Southern California?

5 ADMINISTRATIVE LAW JUDGE BREEN: No questions.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Any public  
7 comment?

8 UNIDENTIFIED MALE: No, not on this.

9 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. All right.  
10 The next item has to do with the terms of the Advisory  
11 Committee members. I touched on this in the introduction.

12 Each members serves for two years. We have a fall  
13 meeting and then we have a spring meeting. So for those of  
14 you who are returning members, this is the first -- your next  
15 to last meeting, in terms of your current term. For those of  
16 you who are new members, this is the beginning of your two  
17 year term.

18 At our meeting in the spring I will talk about  
19 applications, so for those of you who are finishing up your  
20 second term, if you remain interested in serving, and I  
21 certainly hope that you will consider serving, continuing to  
22 serve, you would then have an opportunity to submit an  
23 application. Any questions about terms of service? And  
24 Southern California?

25 ADMINISTRATIVE LAW JUDGE BREEN: No questions here.

1 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. The next  
2 item I'd like to talk about is staff changes at the Office of  
3 Administrative Hearings.

4 In August of this year we were able to bring on  
5 another Administrative Law Judge in the Van Nuys office by  
6 the name of Robert Martin. He has extensive experience in  
7 civil litigation. He is fully trained and is out mediating.  
8 He is finishing up his training, in terms of hearings, so  
9 very shortly he will be on the regular rotation for both  
10 mediations and hearings.

11 In addition, our director, Linda Cabatic has  
12 appointed a deputy director and Melissa Crowell will join us  
13 as deputy director effective December 1st. Judge Crowell has  
14 been with the Office of Administrative Hearings since June of  
15 1995. She worked in the Oakland General Jurisdiction Office,  
16 originally as a pro tem, and then as an ALJ, and she also  
17 served as the Presiding Administrative Law Judge for the  
18 Oakland General Jurisdiction Office.

19 So she brings a wealth of experience and I'm  
20 looking forward to working with her on special education.  
21 And she was one of the judges who did handle, way back when  
22 in the very beginning of August 2005, when OAH took over the  
23 current contract, she did handle a number of special  
24 education mediations, and she is very much looking forward to  
25 the opportunity to working with us, and continuing to develop

1 and improve the program.

2 Any questions? Comments? Still nothing from  
3 Southern Cal? So I will move on.

4 ADMINISTRATIVE LAW JUDGE BREEN: No questions, no  
5 comments.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Now, we  
7 will start with, perhaps, the substantive portion of the  
8 agenda.

9 The first item is timely submission of pre-hearing  
10 conference statements and requests for continuances. And I  
11 believe that the -- I have discussed this at other meetings,  
12 and it's been -- perhaps more in the nature of a reminder,  
13 that we currently have pre-hearing conferences that are due  
14 three business days prior to a pre-hearing conference.

15 So if your pre-hearing conference is scheduled for  
16 Monday, your pre-hearing conference statement is due to OAH  
17 and the other side by close of business the prior Wednesday.  
18 And if you have a Wednesday pre-hearing conference, that PHC  
19 statement is due the Friday prior to the PHC.

20 We know that all -- we are hoping, and it is pretty  
21 much proven true, that the parties, when you're getting close  
22 to a PHC that you certainly are working hard to prepare for  
23 the PHC and the hearing, and we also know that you are most  
24 likely working hard to see if the matter can be resolved.  
25 And both of those are essential to our process, and I know

1 can be very time consuming to the parties involved.

2 From our standpoint, and to some extent the  
3 parties' standpoint, not having pre-hearing conference  
4 statements, or request for continuance, either of the pre-  
5 hearing conference or of both the PHC and due process  
6 hearing, come in timely, means that it is very difficult for  
7 us to allocate resources, which means assign a judge to the  
8 pre-hearing conference whether is likely to conduct the pre-  
9 hearing conference, and then likely, if the hearing goes  
10 forward, to continue with the case.

11 Several meetings back there was discussion of this  
12 item, and OAH agreed that if the parties submitted a  
13 stipulated request to extend the submission of pre-hearing  
14 conference statements, that -- and if that was submitted by  
15 the due date for the pre-hearing conference statement, namely  
16 three days before the PHC, then it would automatically be  
17 granted, and that pre-hearing conference statements would be  
18 due no later than noon the day before. So either noon Friday  
19 for Monday PHC's, or noon Tuesday for Wednesday PHC's. And  
20 we have continued to do that.

21 To be perfectly honest, most of those come in  
22 significantly after the deadline. They come in the day  
23 before the pre-hearing conference, sometimes the day of, and  
24 to be honest, as long as both parties agree, we've been very  
25 tolerant and have accepted that. Because frankly, at that

1 point, we don't have your PHC statement, so what can we do?

2           So again, it's -- you know, we have talked about  
3 what we can do, and I know the parties are doing your best,  
4 but again, it's just a reminder. And I guess -- what -- I  
5 would encourage you, if it looks as though you are on the  
6 verge of a settlement, and you're talking about perhaps  
7 moving the PHC, again I'm not saying that just because you're  
8 discussing settlement we will grant a continuance, but  
9 clearly if we get a request for a continuance it's a good  
10 idea that things are going to be resolved.

11           Similarly, we take that same position with PHC  
12 statements coming in late. But it's just presents a problem.  
13 Because, as you all know, unless that PHC is continued, the  
14 judge is going to be assigned, and we will expect the parties  
15 to be there and participate in a pre-hearing conference.

16           So at this point -- and the other thing I want to  
17 say is, you know, OAH tries to assign a judge to a pre-  
18 hearing conference and have that same judge conduct the  
19 hearing because we think that's in everybody's interest.  
20 However, I'm sure that you've noticed that very often the PHC  
21 judge is different than the due process hearing judge.

22           And I will say that that results sometimes from a  
23 preemptory challenge, and sometimes it's just because of  
24 uncertainty, so that we will put multiple PHC's on judge's  
25 calendars because we have to expect things are going, unless

1 we get a continuance, and then we have to juggle if we have  
2 all those cases going.

3 So again, whatever you can do to assist us, or any  
4 ideas you might have, we are certainly open to considering  
5 those.

6 So any discussion, comment, creative suggestions in  
7 Northern California? Okay. How about Southern California?

8 ADMINISTRATIVE LAW JUDGE BREEN: Okay. Nothing in  
9 Southern California.

10 ADMINISTRATIVE LAW JUDGE KOPEC: Any public  
11 comments?

12 UNIDENTIFIED MALE: Not on this.

13 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Well again,  
14 I appreciate your consideration and assistance. And you  
15 know, if you have great ideas let me -- certainly let me  
16 know. And you know, we will -- we're continuing to explore  
17 options, and if we have any system process changes we will  
18 let you know. But I appreciate your cooperation on this.

19 The second item is the special education decision  
20 data base. As some of you may be aware, we do have all of  
21 the special education decisions available that are issued  
22 from OAH on our website. And prior to late June of this  
23 year, we also had a link of decisions available from prior to  
24 August of 2005 when OAH resumed this program. The -- that  
25 particular website was removed, but I want you to know that

1 it is now back up and running.

2 The California Department of Education has taken  
3 over responsibility for that, and so we have a link to that  
4 database. I know that as soon as this -- I want to -- some  
5 of you may know, because I had a lot of contact, because of -  
6 - people we very concerned when those older cases were no  
7 longer available.

8 We had no notice and had no idea what was  
9 happening. We worked very closely with the California  
10 Department of Education, and we have it up and running. So  
11 as far as I know there are no changes planned, and I think  
12 everybody understands that if there are changes, that folks,  
13 including the community, need to be aware of that. So I did  
14 not want to let you know that that is up and running.

15 Comments?

16 MR. REZOWALLI: Just a -- that doesn't affect us  
17 (inaudible) receive the notices of the hearings, email,  
18 that's --

19 ADMINISTRATIVE LAW JUDGE KOPEC: No --

20 UNIDENTIFIED MALE: That's all fine?

21 ADMINISTRATIVE LAW JUDGE KOPEC: No. This was just  
22 the copy -- and it was the older cases prior to August of  
23 2005, any of those cases -- frankly, the cases from SEHO at  
24 McGeorge. Those -- it was just copies of those decisions  
25 that were not available on the website. But now they are and

1 -- available. And I should say operating as well as they've  
2 ever operated.

3           And again, while we're on that, I do know that the  
4 whole issue of the search engine with, particularly the OAH  
5 decisions, has long -- been a long standing issue. And I  
6 know you've heard this from my predecessor, and I'm sure I've  
7 said it as well; that we are continuing to look at what we  
8 can do to make that search engine much more robust and  
9 responsive.

10           OAH remains committed to using technology to  
11 improve our processes, and improve accessibility, and you  
12 know, but for budget concerns -- that basically says it all.  
13 But I do know that we continue to be aware, and to the extent  
14 where we are actively exploring options. Anything else in  
15 Northern Cal? Southern California?

16           ADMINISTRATIVE LAW JUDGE BREEN: Any comments  
17 public or otherwise? No comments. Oh, and Ms. Murai had  
18 something.

19           MS. MURAI: I just had a quick question. Was there  
20 a change in the search engine? Because it seems to me that  
21 more recently, in I would say about the past six months or  
22 so, decisions that I'd find earlier through certain  
23 (inaudible) that I've used, are no longer coming up. And I'm  
24 not sure -- and it's not just SEHO decisions. So I'm not  
25 sure if there was a transition to a new search engine, or

1 what's the situation.

2 ADMINISTRATIVE LAW JUDGE KOPEC: Just -- I want to  
3 make sure that I understand the question. The audio wasn't  
4 as clear -- you've had the experience with OAH decisions that  
5 you know you've been able to pull upon the search engine, and  
6 then you go at a later time and you can't pull them up? Is  
7 that what's happening?

8 MS. MURAI: Yeah (inaudible).

9 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. I am not  
10 aware of -- we have not done anything, in terms of the data  
11 base that would have caused that. It has been a technical  
12 problem over the years with that database, so if that does  
13 happen what you should -- the best way to do it is to send a  
14 comment through the -- you know, the comment link on the  
15 website, and let us know that that is a problem. Because  
16 that actually goes to the staff people who are responsible  
17 for the website.

18 So they will let me know that there is an issue,  
19 and then they would be the ones that would be able to  
20 troubleshoot that. So I really encourage you to let us know.  
21 Because frankly, we have -- I haven't received any complaints  
22 like that, so I was perhaps foolishly thinking that  
23 everything had been working fine. So we really do need to  
24 know if there are any of those glitches. Anything else from  
25 Southern California?

1 I do have a comment from the web, and it -- the  
2 question is what is the purpose of the decision database?  
3 The purpose of the decision database is to make copies of  
4 every issue -- every decision issued by the Office of  
5 Administrative Hearings available to the public on the  
6 website.

7 And just for everyone's information, what we do is  
8 we sanitize the decision so there should be no identifying  
9 information, in terms of the student, but everything else,  
10 the facts, the law, the analysis, the holdings, all of the  
11 rest of the decision is available. And then through CDE,  
12 with their database, they then have the decisions prior to  
13 2005 that were issued by our predecessor agency at the  
14 McGeorge School of Law.

15 So as Ms. Murai has indicated, I know that  
16 practitioners in the area, both attorneys and non-attorney  
17 representatives use the database to -- if you have an issue  
18 that you're researching, or a motion, you want to know what  
19 OAH has done in the past, or SEHO at McGeorge prior to us. I  
20 know that we have had legal scholars use our database, in  
21 terms of looking at trends and decisions, and that type of  
22 thing. So I hope that answers the question of the member of  
23 the public.

24 Ms. Malloy?

25 MS. MALLOY: Also, you (inaudible) the public may

1 be interested in acquiring updates of the decisions and those  
2 can be sent directly to your email.

3 ADMINISTRATIVE LAW JUDGE KOPEC: Terrific. I  
4 appreciate that. Yes. If anyone wishes to receive the  
5 decisions, and any other communications that come from the  
6 special education program at OAH, we do have a ListServe, and  
7 I believe any decisions that are issues on a weekly, or a bi-  
8 weekly basis, those -- copies of those decisions are sent  
9 directly in PDF form to any member of ListServe. And all you  
10 have to do, there is a link on our website to submit your  
11 email address and we can be added -- you can be added to the  
12 ListServe. Thank you. I appreciate that suggestion.  
13 Anything else on this? Okay.

14 The next items is the digital recording system.  
15 For any of you who may have been involved in due process  
16 hearings, you may have had the frustration of experiencing  
17 the Administrative Law Judge having some technical difficulty  
18 with our digital recording system. And I thought I should  
19 let you all know what's going on and what we're doing about  
20 it.

21 So first off, if any of you have been in that  
22 situation I just want to let you know that we appreciate your  
23 patience, and also let you know that no one is more  
24 frustrated or unhappy about any technical problems than the  
25 Administrative Law Judge who is in the room trying to fix

1 things. This is an unforeseen consequence of OAH's effort to  
2 try to maintain technical -- I don't even want to say be on  
3 the cutting edge, but to upgrade our technical ability. And  
4 so we had some incompatibility with the computer program and  
5 our digital recording system.

6 The good news is, is after exploring options and  
7 taking a look at things, by the end of the year we will be  
8 upgrading our digital recording system and our operating  
9 system so that they will be compatible. And it is  
10 anticipated, based on all the information and testing that we  
11 have done, that things will work much better.

12 So hopefully, as I said, by the end of the year  
13 that will happen. So come the next year, we won't be having  
14 this problems. So to my experience in the IT world tells me  
15 that we may have other problems, and there may be a learning  
16 curve, but hopefully the horrible problems and delays that  
17 some of you may have experienced will be a thing of the past.  
18 Any comments? Okay. Again, thank you for your patience. I  
19 can't thank you all enough.

20 The next item is our email -- email addresses and  
21 evaluation surveys. Not quite a year ago OAH moved from  
22 pretty much a paper ScanTron system for evaluation surveys  
23 for mediations and due process hearings to a web based  
24 system.

25 And we are asking for email addresses now on our

1 form, due process complaint requests and mediation only  
2 requests. And we are asking for email addresses on the sign  
3 in sheets at the mediations, and we have just started having  
4 a sign in sheet available at the hearings to capture email  
5 addresses.

6 So again, I just want to encourage folks to give us  
7 your email address and update your address and phone so that  
8 we, obviously, have current contact information. But I also  
9 want to encourage you, or plead with you, to make sure that  
10 with your email address you provide a legible email address.  
11 I just know from the -- filing out sign in sheets, that it  
12 just feels like a burden, and my handwriting, which is bad,  
13 just gets worse.

14 But in terms of the email address, we've had lots  
15 of problems with staff not being able to send them through  
16 email, and then having to send them through mail, and it just  
17 is, again, providing some glitches in a system that isn't  
18 working as smoothly as we thought it would be.

19 I also would like to open this up for feedback from  
20 you all as how the email survey is going, what your comments  
21 are, comparing it to the paper survey, any suggestions or  
22 criticisms that anyone might have about that as well.

23 UNIDENTIFIED FEMALE: I had had a question.

24 ADMINISTRATIVE LAW JUDGE KOPEC: Yes?

25 UNIDENTIFIED FEMALE: Kind of before that last

1 comment. If we regularly represent people, and we go to  
2 mediation, are they -- and we sign in our name, do we need to  
3 re -- always put our address and our email, or is that  
4 something that when they pull it up, we exist, or do they  
5 have to redo it every time?

6 ADMINISTRATIVE LAW JUDGE KOPEC: Well, if you are  
7 in our system and there no updates, you should be in our  
8 system correctly. So we really need to capture any changes,  
9 and then sometimes what has happened -- I would think that if  
10 you are representing people and frequently getting  
11 information from us, if there's a wrong address somewhere we  
12 would have found out about it.

13 But that would be the other, sort of, safety net to  
14 have people fill that out. So I hesitate to say we don't  
15 need the information, but that's the purpose. If we already  
16 it, it should be in our system; it's a way to tell us of  
17 changes.

18 Any other comments here in Sacramento?

19 UNIDENTIFIED FEMALE: My comment is I don't  
20 remember ever getting an email evaluation.

21 ADMINISTRATIVE LAW JUDGE KOPEC: What -- the way  
22 the system works, and I apologize for not explaining this, is  
23 that the way the system is supposed to work is that after the  
24 mediation, or hearing, you should get an email giving you,  
25 like a password number that -- and a link, and you then go to

1 the link on the web and enter this -- I think they call it a  
2 token number in their jargon.

3           You enter that password number and then it pulls up  
4 the -- it's -- the content is the same, and so it -- to be  
5 honest, I found out recently, which is why I wanted to bring  
6 it on the agenda, that some staff, because of not having the  
7 right information, some of the staff are then sending this  
8 information about the token number and a survey to people.  
9 Sort of mailing -- doing the same thing; mailing out the  
10 survey with that. So have you been receiving it by mail? Or  
11 you're just not getting it at all?

12           UNIDENTIFIED FEMALE: Now that you say that, I  
13 don't think I'm getting it at all. So I'll look and see if  
14 it's being spam blocked. I'll double check my --

15           ADMINISTRATIVE LAW JUDGE KOPEC: Okay. And if you  
16 aren't getting -- if you check and you think you're just not  
17 receiving it, let me know and I'll just make sure that when  
18 you're -- you know, just again, remind staff that they need  
19 to be sending these out.

20           UNIDENTIFIED FEMALE 2: And when did the email  
21 system go into place?

22           ADMINISTRATIVE LAW JUDGE KOPEC: It is -- it has  
23 been in place -- I think we started it in the spring.

24           UNIDENTIFIED FEMALE 2: Okay.

25           ADMINISTRATIVE LAW JUDGE KOPEC: Right around the

1 first of the year, early spring I believe.

2 UNIDENTIFIED FEMALE 2: All right. Because I  
3 agree, I think we may not be getting the surveys as well.

4 UNDERSTAND FEMALE 3: I don't think I am either.

5 ADMINISTRATIVE LAW JUDGE KOPEC: Really?

6 UNIDENTIFIED FEMALE 3: I got one once in the  
7 summer, but I don't think I've gotten one since.

8 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. If you  
9 wouldn't -- it would be helpful in knowing -- if you could --  
10 you know, make sure -- if you need the information so that  
11 you can put it on your safe sites list, or something, what I  
12 would suggest you do is contact any staff member assigned to  
13 any case that you have, and they'll be able to give you that  
14 information so that you can enter it into your system and  
15 you'll get it.

16 Anything from Southern California?

17 ADMINISTRATIVE LAW JUDGE BREEN: Yes. Ms. Murai  
18 wanted to comment. And just to remind folks here in Southern  
19 California, this is comments on email receipt of CDE surveys.  
20 Go ahead, Ms. Murai.

21 MS. MURAI: One of the things I wanted to -- I know  
22 is that some -- most of my clients do not have internet, and  
23 so they don't have a regular email addresses. So I don't  
24 know if at least the forms can be available by paper so that  
25 they can review the form.

1           The other question that I had is if the surveys are  
2 through email, is the evaluation still confidential because  
3 it's attached now to email?

4           ADMINISTRATIVE LAW JUDGE KOPEC: Sure.

5           MS. MURAI: (Overlapping) I had.

6           ADMINISTRATIVE LAW JUDGE KOPEC: Good question. As  
7 to paper evaluations, yes, if we do not have an email address  
8 the staff are sending out the old -- the regular paper  
9 surveys that you just fill in the bubble, and then they need  
10 to be mailed back. And then we are then entering that  
11 information so it's included in our analysis.

12           In terms of confidentiality, one of the reasons --  
13 it's my understanding, one of the reasons we went with this  
14 particular survey took with the token was to assure  
15 confidentiality, so that there's no connection between the  
16 results being reported, and who the person is reporting them.  
17 Does that answer your question? Okay. Any other comments?

18           ADMINISTRATIVE LAW JUDGE BREEN: And we have Ms.  
19 Dalton.

20           MS. DALTON: I also haven't been getting these by  
21 email, and I have notoriously bad writing, no matter how hard  
22 I try. I'm wondering is it appropriate just to staple our  
23 business cards to that sign in sheet for mediations? Would  
24 that help?

25           ADMINISTRATIVE LAW JUDGE KOPEC: Oh, that would be

1 great.

2 MS. DALTON: Okay.

3 ADMINISTRATIVE LAW JUDGE KOPEC: That's a great  
4 idea.

5 MS. DALTON: Thank you.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Sure. Anything  
7 further? Public comments? No? Okay. Thank you.

8 The next item is LAUSD mediation and hearing  
9 locations. As of July, as the result of LAUSD's own budget  
10 challenges, they are no longer using their Valley location  
11 for mediations or hearings. So effective July 1 all LAUSD  
12 mediations are being held downtown in their main office, and  
13 all LAUSD mediations are being initially scheduled into the  
14 Van Nuys office.

15 ADMINISTRATIVE LAW JUDGE BREEN: And Judge Kopec,  
16 just to correct, you said mediations; it's actually hearings.

17 ADMINISTRATIVE LAW JUDGE KOPEC: I'm sorry.  
18 Hearings. Thank you. The mediations are LAUSD's downtown  
19 office, and the hearings are at the Van Nuys office. If  
20 those locations are not convenient, we are asking the parties  
21 submit a -- basically a change of venue, or a request to  
22 change the location.

23 This is the same practice that we do for hearings  
24 everywhere, but it's a little bit different, in terms of  
25 mediations. Ordinarily, if a party requests a change of

1 mediation location, the parties agree and there's no problem.  
2 But what we have to do for -- if there a request to have a  
3 location other than downtown for an LAUSD mediation, we need  
4 to have that request, and an opportunity for the district to  
5 respond. And we will rule on it as we would any other  
6 request for a change of venue, based on the legal provisions.

7 We have, especially now since we have been running  
8 a lot of hearings, there have been occasions when the Van  
9 Nuys office is full up and we have been able to have hearings  
10 conducted in the downtown office of the Office of  
11 Administrative Hearings. Unfortunately there were -- have  
12 been times when we didn't have hearing rooms, and then it's  
13 my understanding that the LAUSD was able to have hearing  
14 rooms in their downtown office.

15 So far this has been working. Probably, at least  
16 in my view, I was -- I don't know what I was expecting. A  
17 tsunami I think. And things are working fairly smoothly.  
18 But I wanted to let everybody know. Those of you who  
19 practice with LAUSD, this shouldn't be news, but I wanted to  
20 make everybody aware of this, and why we were doing it.

21 Any comments? Southern California?

22 ADMINISTRATIVE LAW JUDGE BREEN: And Mr. Economou  
23 has a question.

24 MR. ECONOMOU: I was wondering, is there a standard  
25 by which to request to have a change of venue? Or is it just

1 merely a request based on any circumstances that we feel are  
2 appropriate?

3 ADMINISTRATIVE LAW JUDGE KOPEC: Yes. Any -- I  
4 mean, in terms of putting in the request, if you feel that,  
5 for whatever reason, you want another location, that should  
6 be expressed. And any law that you feel supports that point  
7 of view, should be cited. And then we will apply the law and  
8 evaluate the facts, and make a ruling.

9 MR. ECONOMOU: And is there a timeframe by which to  
10 make that request? Is it when we do our initial filing, or  
11 subsequently, when we get the scheduling order?

12 ADMINISTRATIVE LAW JUDGE KOPEC: You know, I would  
13 suggest -- you know, when you do the initial filing you'll  
14 get our scheduling order. I think any time after the  
15 scheduling order, and as soon as possible, I think it would  
16 be a good idea.

17 I think it's -- you know, that way we can rule on  
18 it, and we have some certainty. Particularly when we're  
19 talking about -- well, actually both, it applies. But  
20 certainly with hearings, since in terms of numbers of rooms  
21 available, and especially during our busy season we'd rather  
22 know sooner rather than later.

23 MR. ECONOMOU: Okay. Thank you.

24 ADMINISTRATIVE LAW JUDGE KOPEC: Any comments in  
25 Northern California? Any public comment? No? All right.

1           The next item is hearing scheduled day to day, and  
2 you may have noticed on your initial scheduling order that  
3 OAH has begun including this language, where we will give you  
4 the initial hearing date, and then there is language that the  
5 hearing shall continue day to day as necessary and as ordered  
6 by the -- by OAH or the ALJ.

7           Similarly, when we are doing orders, particularly  
8 orders after pre-hearing conferences, and we are finalizing  
9 hearing dates, and perhaps adding dates or changing dates,  
10 the practice now would be to give a date certain -- for  
11 example, if the parties think it's going to be a three day  
12 hearing, it will say December 1-3, and continuing day to day  
13 as necessary, as ordered the ALJ.

14           And the purpose of that is to just make clear that  
15 the expectation is that this matter will go and then it will  
16 finish. It will continue until it is finished. I know that  
17 we, a couple meetings ago, had some discussion about this  
18 concept and which hearing get priority, and all the rest.  
19 And we have decided to change -- to use this language, as I  
20 said, to communicate that, at least from OAH's standpoint, we  
21 are committed to doing whatever we can do to make dates  
22 available and have the matter finish expeditiously.

23           It doesn't mean, for example, after you have a pre-  
24 hearing conference or during the pre-hearing conference and  
25 the judge talks to you about how many days you need, and

1 finally says okay, one party wants two months, one party  
2 wants a day, and hopefully the judge will give a reasonable  
3 estimate. It doesn't mean that you get as much time as you  
4 need. Or you want, I guess. You get as much time as you  
5 need; you don't get as much time as you want.

6 So that's why we have the proviso in there, as  
7 necessary and as ordered by the ALJ. As always, in terms of  
8 dates, I always said during a pre-hearing conference, I want  
9 your date to be as realistic as possible, and I'd rather  
10 we're surprised by not needing the time rather than having to  
11 have it added. But obviously, we need to have realistic  
12 dates.

13 But if you find that you need additional time, and  
14 the judge orders it, it is hoped, expected perhaps, that you  
15 will continue to go consecutively if at all possible.

16 So comments in Southern California?

17 ADMINISTRATIVE LAW JUDGE BREEN: Ms. Johnson has  
18 immediately had a comment.

19 ADMINISTRATIVE LAW JUDGE KOPEC: Okay.

20 MS. JOHNSON: More a question. I know, at least on  
21 my calendar during (inaudible) with hearings, my calendar is  
22 backed up with hearings week after week after week. Would it  
23 be the expectation that we try to continue hearings, or at  
24 least have several extra days after what has been agreed upon  
25 as the amount of dates, or will be just be looking with the

1 hearing officer at the end of that time to the next available  
2 dates to continue a hearing?

3 ADMINISTRATIVE LAW JUDGE KOPEC: I'm not quite sure  
4 what -- I understand what you're asking.

5 MS. JOHNSON: For instance, if at the PHC we  
6 decided -- both parties have agreed that perhaps five days is  
7 an appropriate amount of time for the hearing, and then it  
8 doesn't finish in that amount of time, I often will have  
9 another hearing that's already set for the following week.

10 What would be the expectation, in terms of before  
11 we get there -- would it be the expectation that I had  
12 continued that other hearing already, or would the judge  
13 that's presiding over the hearing that -- you know, that  
14 we're currently, take into consideration the fact that both  
15 parties may have additional hearings that back up to the  
16 hearing we're currently in?

17 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah. And this  
18 touches on the discussion we had several meetings back, in  
19 terms of if you have a hearing that's ongoing, and then you  
20 have another case that is scheduled for the same day, and  
21 what's the expectation?

22 And I know that I expressed, from OAH's standpoint,  
23 that the expectation is that the hearing that starts first,  
24 under most circumstances, would be given -- I don't want to  
25 say precedence, but in terms of a ruling, that if you are in

1 a hearing that's continuing, then you file a request for a  
2 continuance for the hearing -- for the second hearing that is  
3 going to start on the day that now conflicts, that under --  
4 all things being equal, I would think in most cases you would  
5 be granted the continuance.

6           Particularly, if you are in hearing and your  
7 hearing is going, and let's say it's supposed to stop on  
8 November 4th, and you're requesting a continuance on your  
9 hearing that's scheduled for November 5th. Again, I can't  
10 say there's a guarantee, because there's never a guarantee,  
11 but under most circumstances I would think that you would be  
12 given a continuance for November 5th. Does that answer the  
13 question?

14           MS. JOHNSON: Yes, thank you.

15           ADMINISTRATIVE LAW JUDGE BREEN: And could I expand  
16 on that, Judge Kopec?

17           ADMINISTRATIVE LAW JUDGE KOPEC: Oh, please do.

18           ADMINISTRATIVE LAW JUDGE BREEN: And just -- you  
19 know, keep in mind, the folks that -- the thing you don't  
20 want to do, is triple set yourself. That's -- you're not  
21 talking about that, but that's where we've had the most  
22 difficulty; is attorneys that don't think that they have to  
23 control their own internal conflicts. They can't be in three  
24 places, and the set themselves that way. That's where we  
25 have the most problem.

1           What you're talking about, generally, almost always  
2 can be worked out. If you have back to back hearings,  
3 inevitably -- you know, the policy we're trying to pursue is  
4 that they're going to finish as close as possible to the time  
5 they started.

6           So, you know, if both counsel are off in other  
7 hearings, we have a lot of ways we can -- you know, your ALJ  
8 is always going to find ways -- maybe -- maybe all you got  
9 left is a half a day and you can do it telephonically. Maybe  
10 that other case can go dark for a day. There's always  
11 something we can do.

12           The bigger thing is not telling the judge about it.  
13 You got to just give us the information up front. Hey look,  
14 I may have this conflict. You know, information is always --  
15 more information is always better. No matter what we do, we  
16 need to know. Right?

17           So I've always seen it work out under the scenario  
18 you're talking about through some combination of either  
19 putting off one of the cases, going dark a day; something  
20 like that. We're always able to figure it out as long as you  
21 tell us.

22           Is that consistent with what we were trying to get  
23 at, Judge Kopec?

24           ADMINISTRATIVE LAW JUDGE KOPEC: Absolutely.

25           MS. JOHNSON: Thank you.

1 ADMINISTRATIVE LAW JUDGE KOPEC: Anything else,  
2 Southern California?

3 ADMINISTRATIVE LAW JUDGE BREEN: Any other comments  
4 or public comments on scheduling?

5 ADMINISTRATIVE LAW JUDGE KOPEC: Ms. Malloy?

6 MS. MALLOY: I don't have the language, but I'm  
7 wondering if we (inaudible) like make a motion that if a  
8 continuance is requested when in a hearing, and you're on a  
9 day to day basis, that the ALJ will consider it good cause  
10 and grant the continuance?

11 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. So they'd  
12 grant the continuance for the second hearing that now has the  
13 conflict?

14 MS. MALLOY: Yes.

15 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Is there a  
16 second for that recommendation? No?

17 ADMINISTRATIVE LAW JUDGE BREEN: It was seconded by  
18 Nicole Dalton.

19 ADMINISTRATIVE LAW JUDGE KOPEC: Oh, it was? Okay.  
20 All right. Any discussion?

21 MR. REZOWALLI: My thought was that was what you  
22 were saying you would be doing. That's your practice  
23 already. The difference between that and the motion you  
24 practice?

25 ADMINISTRATIVE LAW JUDGE KOPEC: Well, I guess if I

1 understood the motion correctly, is that the motion would  
2 basically say that it would be good cause so that it would be  
3 granted. What I was saying is that -- I wasn't saying that  
4 it would guarantee to be granted. In most cases, looking at  
5 the circumstances, it probably would be. But Ms. Malloy, and  
6 maybe I misunderstood.

7 MS. MALLOY: No, I just understand that there are  
8 some items that the Office of Administrative Hearings  
9 provides as good cause when seeking a continuance. For  
10 example, if both parties agree, if there's a lengthy motion  
11 or discussion, et cetera. And so I just thought we might  
12 want to include the language that because we're going day to  
13 day that the continuance would be good cause.

14 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Ms.  
15 Broussard?

16 MS. BROUSSARD: My concern with it automatically  
17 being good cause is if I'm -- it's all great if you're the  
18 person we're talking about, right? But if you're sitting  
19 blind as the attorney in case two for attorney who needs the  
20 continuance, you don't know that's going on, right? So  
21 you've got attorney A in a hearing day to day, you're in case  
22 -- I can't remember if I said A or 1, but anyway you're in  
23 the second case, you don't know that. I have a real trouble  
24 getting blindsided thinking I'm going to hearing Monday  
25 morning, or -- sorry, never Monday morning -- Monday

1 afternoon, and not finding out until Friday that this other  
2 attorney I'm supposed to be against has some case that they  
3 were in all week.

4           So I mean, I would hope that OAH would also look at  
5 all the circumstances and when notice was given, and that  
6 they had appropriately told their opposing counsel in the new  
7 case, like a week or two before, this could happen. So I  
8 just like the idea of leaving it case by case, because I  
9 think at some point that's just unfair and raises costs for  
10 everyone if there also hasn't been good notice given.

11           I mean, I would like to see an evaluation on a case  
12 by case basis from a judge, because if you're that second  
13 person it could be problematic.

14           ADMINISTRATIVE LAW JUDGE KOPEC: Any other comments  
15 in Northern California? In Southern California any comments  
16 on the recommendation?

17           ADMINISTRATIVE LAW JUDGE BREEN: Okay. Southern  
18 California, starting with committee members, any commentary?

19           MS ADAMS: I agree exactly with what Mr. Broussard  
20 said. I think that it's probably being done very fairly  
21 right now, and I don't see a need for the further language on  
22 that. I like the case by case basis as well.

23           ADMINISTRATIVE LAW JUDGE BREEN: Okay. And was  
24 that audible to everybody, Ms. Adam's comments?

25           ADMINISTRATIVE LAW JUDGE KOPEC: Yes.

1 ADMINISTRATIVE LAW JUDGE BREEN: Okay.

2 ADMINISTRATIVE LAW JUDGE KOPEC: Thank you.

3 ADMINISTRATIVE LAW JUDGE BREEN: And Ms. Dalton?

4 MS. DALTON: Yeah, I mean, either way this comes  
5 down; should there possibly be a requirement that in a case  
6 where you are seeking a continuance, whether it's  
7 automatically good cause or not, that there's some sort of  
8 affidavit of notice to the people in the second party that --  
9 you know, the second due process hearing that might get  
10 pushed back, should we have a requirement that those folks be  
11 notified by way of your motion, or a letter, or something?

12 ADMINISTRATIVE LAW JUDGE KOPEC: Is that a  
13 suggestion, perhaps, to revise the recommendation? Or --

14 MS. DALTON: I think so.

15 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. So what  
16 you're suggesting would be that if a hearing is going day to  
17 day that it would be considered good cause to grant a  
18 continuance for -- this isn't very elegant, but for the -- a  
19 second hearing that conflicts with the continuation of the  
20 hearing number one, provided that notice was given to both  
21 parties in the second proceeding?

22 MS. DALTON: Correct.

23 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Ms. Malloy,  
24 do you agree to that?

25 MS. MALLOY: I -- yes.

1 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Okay. Is  
2 there any further discussion on that revised recommendation?  
3 No? Are we ready to vote? All right. Let's vote in  
4 Northern California. I'll try to -- do we need to have it  
5 summarized again, or do people understand? People  
6 understand. Okay.

7 Those in favor in Northern California? We have Ms.  
8 Malloy, Ms. PEITSO, Ms. Sherman. And all opposed? We have  
9 Ms. Gutierrez, Mr. Rezowalli, Ms. Bean, Ms. Broussard, and  
10 Ms. Soukup. Okay. And in Southern California? All in  
11 favor?

12 ADMINISTRATIVE LAW JUDGE BREEN: Those in favor?  
13 We have one, Ms. Dalton.

14 ADMINISTRATIVE LAW JUDGE KOPEC: And opposed?

15 ADMINISTRATIVE LAW JUDGE BREEN: Okay. We have six  
16 opposed. Ms. Johnson has joined, so six in opposition.

17 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Do you want  
18 to name those six, please?

19 ADMINISTRATIVE LAW JUDGE BREEN: Sure. Ms.  
20 Johnson, Ms. Lally, Ms. Murai, Mr. Cochran, Ms. Adams, and  
21 Mr. Economou.

22 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Thank you  
23 very much. Any further discussion on this item before we  
24 move on?

25 ADMINISTRATIVE LAW JUDGE BREEN: Any public comment

1 here in the south? Okay.

2 ADMINISTRATIVE LAW JUDGE KOPEC: All right. The  
3 next item is mediation in lieu or resolution session, and  
4 waiver of resolution session.

5 Some of you may have seen that we have started  
6 sending out notices when we receive notification from the  
7 parties concerning what's described as a waiver of a  
8 resolution session. Let me step back a little bit.

9 We have from time to time received a written notice  
10 from parties, signed by both parties, indicating that they  
11 are waiving a resolution session. But by looking at what  
12 they're doing in terms of the dates of the hearing, it seems  
13 as though they really don't want to waive the resolution  
14 session because what that does, by law, under Federal -- the  
15 Federal regulation, if both parties agree in writing to waive  
16 a resolution session, the timeframe for the due process  
17 hearing begins.

18 So what that would -- if a party wants to waive a  
19 resolution session, what it means -- what we have to do is  
20 then move the due process hearing dates forward. And I must  
21 say over the time we've had the program, there have been a  
22 few cases where that is exactly what the parties wanted to  
23 do, and that's what we've done.

24 But I started seeing these where, for example, one  
25 circumstance was the parties said -- both signed a letter

1 saying we agree to waive the resolution session, and we want  
2 to hold -- they want to move the mediation date forward,  
3 basically into what would have been the 30 day resolution  
4 period.

5 So after getting the parties on the phone I found  
6 out that want they -- all they wanted to do was mediate  
7 instead of holding a resolution session. And so -- it's  
8 interesting, because I don't know how many times I've read  
9 the Federal regs after the reauthorization, I thought I knew  
10 what they meant.

11 I realized, okay, there are two things you can do  
12 under the Federal regs; you can waive the resolution session  
13 and start the timeframe if both parties agree in writing, or  
14 the parties can both agree to use the mediation in lieu of a  
15 resolution session. So in the situation where the parties  
16 wanted to move their mediation date up during the first 30  
17 days after filing, what they really wanted to do under the  
18 law was use mediation in lieu of the resolution session.

19 So what I did is I came up with a notice that I am  
20 sending out in cases where the parties are using language  
21 that says they're waiving the resolution session, but they're  
22 not asking that the hearing dates be moved up, and it appears  
23 that all they want to do is use mediation in lieu of the  
24 resolution session. So I'm just issuing that order in those  
25 cases, and if the parties disagree they will let us know.

1           And after we started doing those I've started  
2 seeing some letters come back where the parties are  
3 indicating that what they want to do is use mediation in lieu  
4 of resolution session.

5           So again, I just wanted -- some of you may have  
6 seen this already coming from us, but I just wanted to bring  
7 it up to make everybody aware, and see if there's any  
8 questions or comments on that. Southern California?

9           ADMINISTRATIVE LAW JUDGE BREEN: Judge Kopec, I was  
10 just going to say, can I expand slightly on that?

11           ADMINISTRATIVE LAW JUDGE KOPEC: Sure.

12           ADMINISTRATIVE LAW JUDGE BREEN: Going down that  
13 route of saying mediation instead of resolution, the IDEA  
14 then pegs the 45 day timeline to the completion of mediation.  
15 Right?

16           Normally on a student filed case the 45 day  
17 timeline for a decision starts at the expiration of the 30  
18 day period in which parties have to go to resolution session.  
19 If you say I want mediation in lieu of a resolution session,  
20 you're now pegging the 45 day timeline to the completion of  
21 mediation. That's when the clock starts.

22           Is that consistent, Judge Kopec? I was just  
23 expanding more on what the law says.

24           ADMINISTRATIVE LAW JUDGE KOPEC: It's certainly  
25 what the law says, in terms of what practical impact it has,

1 I guess I'd have to defer to take a look at what the dates  
2 are and how things are, but you are correct in terms of my  
3 memory of what's in the regulation.

4 ADMINISTRATIVE LAW JUDGE BREEN: Right. That's all  
5 I wanted to get out. That's exactly -- that's what the reg  
6 says. When you're asking for that, that's what we're  
7 supposed to be doing.

8 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. And Mr.  
9 Rezowalli?

10 MR. REZOWALLI: How is word getting out that this  
11 is allowed? Because they're asking and then you respond to  
12 them? Or is there any way we can get word out to the field  
13 that if you want to do this, this is what would happen?

14 ADMINISTRATIVE LAW JUDGE KOPEC: Well, the word is  
15 that it's in the regulation -- it's in the Federal  
16 regulations. So I was hoping that, you know, in terms of  
17 explaining what we're doing here, and then if it's coming up  
18 in cases, people are getting a notice. But other than -- I  
19 hesitate to say anything else because it's already in the  
20 regulation.

21 So it seems a little bit like an education process  
22 as things are coming in, based on the filing to us, if it  
23 appears as though the parties are, maybe, not quite clear  
24 which way they're going, then that's why we will come -- OAH  
25 will send out this notice and say, okay, we're not sure what

1 -- and I lay out the law very clearly. It's like if you  
2 waive the resolution session this is what happens, if you go  
3 to mediation in lieu of resolution, we're not going to change  
4 your dates and this is what happens. So that's what we've  
5 done -- do you have any suggestions?

6 MR. REZOWALLI: Well, could it be in your  
7 frequently asked questions? You have a couple --

8 ADMINISTRATIVE LAW JUDGE KOPEC: Oh, okay. That's  
9 a good -- yeah -- well --

10 MR. REZOWALLI: (Overlapping) we need to highlight  
11 it for people.

12 ADMINISTRATIVE LAW JUDGE KOPEC: Oh, that's a great  
13 idea, actually. Because both the FAQ's and the manual, we're  
14 in the process of reviewing and updating them, so of  
15 course --

16 MR. REZOWALLI: (Overlapping).

17 ADMINISTRATIVE LAW JUDGE KOPEC: Pardon?

18 MR. REZOWALLI: Well, you have a really long one  
19 and then --

20 ADMINISTRATIVE LAW JUDGE KOPEC: Right. The FAQ's  
21 I think are shorter, and then the manual is more  
22 comprehensive. Okay. That's a great suggestion. Do you  
23 want to do that in form of a recommendations, or you just  
24 want to have that as your comment?

25 MR. REZOWALLI: (Inaudible).

1 ADMINISTRATIVE LAW JUDGE KOPEC: Pardon?

2 MR. REZOWALLI: If you prefer a formal --

3 ADMINISTRATIVE LAW JUDGE KOPEC: It's up to you.

4 MR. REZOWALLI: No, I don't --

5 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Any other  
6 comment? Ms. Broussard?

7 MS. BROUSSARD: So are -- in cases where the  
8 district fails to notice or hold the resolution session, you  
9 are still accepting motions to move up the dates for failure  
10 to convene; is that correct?

11 ADMINISTRATIVE LAW JUDGE KOPEC: If they failed to  
12 have a resolution session --

13 MS. BROUSSARD: Notice it.

14 ADMINISTRATIVE LAW JUDGE KOPEC: Or notice it,  
15 we're still --

16 MS. BROUSSARD: Are you still entertaining then  
17 motions to move up the dates, because you kind of talked  
18 about stipulated, and I just wanted to make sure that other  
19 avenue hadn't gone away.

20 ADMINISTRATIVE LAW JUDGE KOPEC: Absolutely not.

21 MS. BROUSSARD: Okay.

22 ADMINISTRATIVE LAW JUDGE KOPEC: No, that's still  
23 in the law, and --

24 MS. BROUSSARD: Okay.

25 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah, it's -- it

1 just the duty of the party to bring that to OAH's attention,  
2 because we don't oversee or monitor what's going on in the  
3 resolution session arena. Absolutely, yeah.

4 MS. BROUSSARD: Okay. So once the OAH notice is  
5 sent out, and the parties indicate that they want to waive  
6 the mediation -- or the resolution session in lieu of the  
7 mediation -- I said that right -- that they -- are the  
8 mediation dates then changed? Or are they -- do they still  
9 remain set at what they were originally?

10 ADMINISTRATIVE LAW JUDGE KOPEC: It depends on the  
11 -- what the parties are telling us they want to do. The  
12 example that I used, which I think was the very first time  
13 this kind of came to my radar, was they were moving the  
14 mediation date forward. Okay?

15 But I must say that since then it's been more  
16 common that they are just saying they don't want to use --  
17 they don't want to go to resolution session, and they keep  
18 the mediation date where it is.

19 MS. BROUSSARD: Right.

20 ADMINISTRATIVE LAW JUDGE KOPEC: That's been more  
21 common lately.

22 MS. BROUSSARD: And so those mediation dates then  
23 stay the same? Okay.

24 ADMINISTRATIVE LAW JUDGE KOPEC: The mediation days  
25 stay, the hearing dates stay; everything stays where it is.

1 MS. BROUSSARD: Okay.

2 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah. And --  
3 yeah, we just work on the information that parties give us.  
4 Yeah. Mr. Rezowalli?

5 MR. REZOWALLI: In terms of the resolution  
6 sessions, it's my understanding that CDE is (inaudible) be  
7 informed, or gets informed, whether or not the district has  
8 complied and set a resolution session also within the  
9 timeframe they're supposed to. They are -- I mean, I've seen  
10 from CDE some consultants will say what happened, how come  
11 you took so long to have one?

12 ADMINISTRATIVE LAW JUDGE KOPEC: Right. What we  
13 are continuing to do is we are asking that -- each district  
14 to fill out a form that tells us whether they held the  
15 resolution session, when they held it, whether it was waived.  
16 So what -- all we do is we get that information from the  
17 districts and we then give it to CDE, and then CDE does  
18 whatever they're doing. Yeah.

19 So we just get the information and share the info,  
20 but we don't do anything in terms of acting on it, evaluating  
21 whether it's correct, or doing anything about it.

22 Southern California, any comments on this item?

23 ADMINISTRATIVE LAW JUDGE BREEN: Ms. Murai?

24 MS. MURAI: Just clarification; I was wondering, so  
25 I know you mentioned that you send it out to the parties. Is

1 it when -- because I mainly work with LAUSD and I know that  
2 they have a form, a standard form, that they use. So once --  
3 if both parties sign that standard form, is that when -- is  
4 it -- I'm not sure if you -- it's ordered by you (inaudible).  
5 I'm a little bit confused about that.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. And I must  
7 say, LAUSD is a little bit of a different case. When I first  
8 saw that form from LAUSD I pulled the parties together and  
9 had a status conference. And based on that conversation it  
10 was indicated to me that the purpose of that form -- they  
11 weren't waiving the resolution session, they were just  
12 agreeing not to have the resolution session and go forward  
13 with mediation.

14 So I must say that I started sending out a notice  
15 when I would get these LAUSD forms, but I -- it's hit and  
16 miss, because I have to -- I have to see the form. So if I'm  
17 not seeing the form, nothing is going out. So but it's my  
18 understanding that that form with LAUSD is only -- the  
19 purpose of the form is to agree not to use the resolution  
20 session and to go forward with the dates. So I'm not doing  
21 anything with the dates, and the parties are just using  
22 mediation in lieu of resolution session.

23 Does that respond to your question?

24 MS. MURAI: No -- well, not quite. But I guess  
25 when can we -- when do you issue -- I guess what you're

1 saying about -- like, do parties -- I don't know how to word  
2 this.

3 So is it an order that you're issuing that's saying  
4 that we can waive the resolution and the mediation date is  
5 (inaudible), or is it normally that both parties are sending  
6 out a letter saying that we're waiving the resolution session  
7 and we would like mediation session to (inaudible)?

8 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Let me  
9 explain that.

10 MS. MURAI: I guess (inaudible).

11 ADMINISTRATIVE LAW JUDGE KOPEC: If what is filed  
12 with us is ambiguous as to whether the parties are waiving  
13 the resolution session, and they want the dates for the  
14 hearing to move forward, I'm sending out this notice that  
15 says this is what you said you want us to do, but you -- it  
16 doesn't seem -- you said you wanted to waive the resolution  
17 session, but it looks like what you want to do is keep the  
18 dates the same.

19 So OAH is treating this like an agreement to go to  
20 mediation in lieu of resolution. So what it is is a notice  
21 to the parties saying, basically, we are not treating this  
22 like a waiver of resolution session, and we are not moving  
23 the hearing dates.

24 So if a party gets that and they say, wait a  
25 minute, I thought I waived the resolution session because I

1 want my hearing right away, the party will then inform us and  
2 say no OAH, you got it wrong.

3 Because if I remember correctly, the LAUSD letter  
4 says the parties waive the resolution session, but they also  
5 waive the timelines. So if you're waiving the resolution  
6 session and waving the timelines, OAH is not going to do  
7 anything with the hearing dates. Does that help?

8 MS. MURAI: Yeah. I guess my only concern is that  
9 I have a feeling that, just generally, people that are not  
10 engaged in this meeting today will (inaudible) because  
11 generally when you waive the resolution session I think it is  
12 to -- if you're engaged (inaudible) -- at least that's  
13 generally what I'm accustomed to. So it seems to me that  
14 that's not being treated as (inaudible). Does that make --

15 ADMINISTRATIVE LAW JUDGE KOPEC: Well, if you --  
16 Ms. Murai, I don't know whether you've been involved in this  
17 letter, but if you --

18 MS. MURAI: I don't waive -- I don't -- I rarely  
19 waive the resolution session, so (overlapping) --

20 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. All right.

21 MS. MURAI: I know others that do, and the reason  
22 is because they want to move the timeline, so I'm just a  
23 little concerned that (inaudible).

24 ADMINISTRATIVE LAW JUDGE BREEN: And maybe what --  
25 let me try and rephrase it. What Judge Kopec is saying is

1 that's true, Ms. Murai, we're verifying it. We're just  
2 sending a letter saying, if that's what you want, we'll do  
3 it. That's all we're saying, is that if you sent in  
4 something but we can't tell what you want, we send you  
5 something saying tell us, is this exactly what you want, yes  
6 or no? And then we'll do what you want with it.

7           So it's just -- it's an attempt to get  
8 clarification because people mix the concepts up. They don't  
9 -- not all parties understand that by just blanketly saying  
10 waiving -- I waive resolution session, that that advances the  
11 dates. A lot of folks don't understand that.

12           And to back up, when you get a scheduling order  
13 from OAH, it assumes a 30 day resolution period. If you look  
14 at it, you can line up your filing date, you'll see the  
15 mediation is just after the 30 days. Then you're going to  
16 see that within -- usually to leave enough writing time for  
17 the judge, the hearing is set somewhere out in the 45 days at  
18 about -- I think the -- I'm pretty sure it's -- it leaves  
19 about 15 or 20 days of writing time. That's how it's set  
20 presumptively.

21           When folks say I want to waive resolution session,  
22 that whole scheduling order has to be changed, because it's  
23 based on the 30 day assumption. So all Judge Kopec was  
24 saying is, if we get stuff in from parties that we can't tell  
25 if that's what they want, we're just going to follow up and

1 send them something saying is this what you want? We'll do  
2 it. If not, then the mediation is going to go forward as  
3 scheduled, and we're just assuming you want mediation in lieu  
4 of resolution session.

5 ADMINISTRATIVE LAW JUDGE KOPEC: Although, I just  
6 want to clarify, what the notice says is it's not clear what  
7 you want to do, it sets forth the law, and it says we are  
8 assuming you do not want to move up your dates. So it says  
9 how OAH is treating this ambiguous letter to us, so that -- I  
10 think it's very clear that if any party gets this notice and  
11 says I want to move up my mediation -- I want to move up my  
12 hearing dates, the response will come back to OAH, no, I'm  
13 waiving resolution session, and I want my hearing dates  
14 sooner.

15 So I don't think there's anything unclear about the  
16 notice, but if at -- somebody gets that and you think it's  
17 unclear, let me know. Anything else from Southern  
18 California?

19 ADMINISTRATIVE LAW JUDGE BREEN: Can -- one comment  
20 from Mr. Economou.

21 MR. ECONOMOU: So for purposes of directly dealing  
22 with LAUSD, let's say we do want to move up the dates, so  
23 we've -- we get the RS, the standard RS waiver letter, and  
24 then we have to submit something in more specificity that  
25 we're -- or (inaudible) stating that we want to have an

1 understanding that the days are to be moved up, should we  
2 want to do so?

3 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah. Well, two  
4 things -- I mean, yeah. You need to make clear whatever  
5 you're signing that you are moving up those -- do you want  
6 your hearing days and your timeframe to be moved up.

7 MR. ECONOMOU: Okay.

8 ADMINISTRATIVE LAW JUDGE KOPEC: And the other  
9 thing I should be aware of, is you need to file that directly  
10 with OAH. Because it's my understanding that -- it seems to  
11 be hit and miss whether -- with this LAUSD, the standard  
12 letter they use, whether it ever comes to OAH or not.

13 But I think we are clear that if you want to waive  
14 the resolution session and move your dates up, you need to  
15 send that to OAH, and it needs to be in writing, and it has  
16 to be in writing from both parties. Sometimes we'll get a  
17 letter from one attorney to another saying we have agreed to  
18 waive the resolution session, but that is not -- unless the  
19 signature of both parties is on that letter we're not going  
20 to move up any dates.

21 MR. ECONOMOU: Because it's my understanding that  
22 the LAUSD form, and I understand it to be waiving resolution  
23 session but keeping the same days, but that's an internal  
24 form. I didn't think that they filed that with OAH.

25 ADMINISTRATIVE LAW JUDGE KOPEC: Well, exactly

1 right. And somehow -- and I can't even recall how it  
2 happened, but way back when -- it's probably been, oh, maybe  
3 six or seven months now, when I went into a case and saw that  
4 form, and when I brought the parties on, including someone  
5 from LAUSD, that was their -- you know, it's like this is an  
6 internal form and it really shouldn't go to OAH.

7 And my response was, well, but it's -- once it  
8 comes to us we have to do something with it. So that's why I  
9 think it is kind of hit and miss whether we get these forms.  
10 I think there are -- we get relatively few of them compared  
11 to how many of them are actually signed between the parents  
12 and LAUSD.

13 But the one thing I want to be clear on, is if  
14 parties want us to move those dates up because you're waiving  
15 the resolution session, it has to come to OAH and it has to  
16 be signed by both parties, because we will then move those  
17 dates up. Does that help?

18 Anything else from Southern California?

19 ADMINISTRATIVE LAW JUDGE BREEN: No, nothing else.

20 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Ms. Malloy?

21 MS. MALLOY: We had earlier stated that we might  
22 want to resolve this in the frequently asked questions  
23 portion, so I have the frequently asked questions in front of  
24 me, and it says 'May the resolution session be waived?' And  
25 the answer is 'The parents and the school district may

1 mutually agree to waive the resolution session. This  
2 agreement must be in writing. The parents and the district  
3 may also agree to use mediation instead of holding the  
4 resolution session. If OAH receives a written waiver of the  
5 resolution session signed by both parents the period allotted  
6 for the resolution session ends and the matter proceeds to  
7 mediation and hearing.' The only thing that we would need to  
8 add after this session would be on dates already scheduled.

9 ADMINISTRATIVE LAW JUDGE KOPEC: And to add --

10 MS. MALLOY: And the next sentence would be, if you  
11 want to move dates up, however, you need to notify OAH with a  
12 signature by both.

13 ADMINISTRATIVE LAW JUDGE KOPEC: It's a good  
14 suggestion. Right.

15 MS. MALLOY: Okay.

16 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Thank you.  
17 Any other comments in Sacramento? Public comments? No?  
18 Okay. Thank you very much.

19 The next item is on a notice regarding no action to  
20 be taken. And this came up because every once in a while we  
21 will get something filed with us in connection with a case,  
22 there may be an open case involving the student, and it's  
23 outside our jurisdiction and I want to make sure that  
24 everybody knows we're not going to take any action on it.

25 The one that happened most recently that I think

1 is a pretty clear example is there was an open OAH case and  
2 we received what I'm familiar with as a claim for damages for  
3 a public entity. And it was -- it was on a form that was  
4 from the school district, and it described whatever happened  
5 to the student, and it was a claim for damages. And it's  
6 what's required before filing a civil lawsuit claiming  
7 damages from a public entity. And the things alleged in this  
8 claim were also things alleged in the due process complaint.

9           And what I did is I just created this notice saying  
10 on thus and such date we received this claim for damages  
11 against whatever school district, OAH does not have  
12 jurisdiction over this and will take no action on it. And  
13 I'm trying to think -- that's the clearest example.  
14 Sometimes -- so basically I just wanted to let people know  
15 that this is what we're doing.

16           And again, it's just to make sure that the record  
17 is clear and both parties are aware that OAH takes no action.  
18 Again, if the party that filed that with us thought that they  
19 were filing a motion, or an amended due process complaint, or  
20 something else, then they would get this notice from us and  
21 say, well, wait a minute; I sent that to you because I  
22 thought I was amending my complaint. Or something like that.

23           So I just wanted you to be aware of that new  
24 process as well. Any comments, questions, in Southern  
25 California? Northern California?

1 ADMINISTRATIVE LAW JUDGE BREEN: (Inaudible).

2 ADMINISTRATIVE LAW JUDGE KOPEC: Okay.

3 ADMINISTRATIVE LAW JUDGE BREEN: Judge Kopec?

4 ADMINISTRATIVE LAW JUDGE KOPEC: Yes?

5 ADMINISTRATIVE LAW JUDGE BREEN: Hold on one  
6 second, and committee members, folks, any comment? Okay.

7 And we had a public member; sir, could you introduce yourself  
8 and then go ahead and make your comment.

9 MR. ATWOOD: Yeah, I'm Peter Atwood (phonetic) and  
10 that was my parent, and she was never supposed to file it  
11 with OAH. She was just confused and she sent it not  
12 realizing what she was doing; there was nothing there.

13 ADMINISTRATIVE LAW JUDGE KOPEC: Okay.

14 MR. ATWOOD: Sorry about that.

15 ADMINISTRATIVE LAW JUDGE KOPEC: Well, that's good  
16 to know and I'm -- you know, I just -- like I said, I just  
17 didn't feel comfortable not doing anything with it, and I  
18 thought this would just be the way to give everybody notice.  
19 So terrific. Anything else?

20 ADMINISTRATIVE LAW JUDGE BREEN: Nothing else in  
21 Southern California.

22 ADMINISTRATIVE LAW JUDGE KOPEC: Northern  
23 California? No? Okay.

24 The next item is notice regarding documentation of  
25 educational rights.

1 ADMINISTRATIVE LAW JUDGE BREEN: Judge Kopec?

2 ADMINISTRATIVE LAW JUDGE KOPEC: Yes?

3 ADMINISTRATIVE LAW JUDGE BREEN: And -- there has  
4 been a request and it's been seconded to have a brief comfort  
5 break.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Actually,  
7 this would be a great time to do it. I have right about  
8 11:35. We are well ahead of our schedule, so you want to  
9 take ten minutes? Would that do?

10 ADMINISTRATIVE LAW JUDGE BREEN: And that's been  
11 seconded as well. Yeah, ten minutes.

12 ADMINISTRATIVE LAW JUDGE KOPEC: We will go off and  
13 we will resume at 11:40.

14 ADMINISTRATIVE LAW JUDGE BREEN: Thanks, Judge  
15 Kopec.

16 ADMINISTRATIVE LAW JUDGE KOPEC: Thank you.

17 **(Off the Record)**

18 ADMINISTRATIVE LAW JUDGE KOPEC: All right. We're  
19 back from our brief recess, and we are moving to item 3(I)  
20 notice regarding documentation of educational rights.

21 And this is more in the nature of, perhaps, a  
22 reminder that when you have -- you're filing on behalf of  
23 students who are now adults, 18 or over, that it's very  
24 important that we have some documentation that the person  
25 filing has educational rights on behalf of that adult

1 student. Unless, of course, we have parents who are  
2 exercising their own rights under the IDEA, rather than  
3 exercising the student's rights.

4 So again, it's just something that every once in a  
5 while becomes an issue and what I'm -- we may start doing  
6 just as -- to make sure that everybody's on the same page, is  
7 that when we do get an initial complaint from an adult, on  
8 behalf of an adult student, that we may, just as a matter of  
9 course, be sending out again, just something in the nature of  
10 a notice indicating that we received the complaint, but that  
11 we haven't received a documentation that the person filing  
12 the complaint has the educational rights.

13 We're going to go ahead and continue to open the  
14 case, but just send that out as a notice to hopefully take  
15 care of that. Because unfortunately sometimes what has  
16 happened is that it will get as far as the mediation, and  
17 then when it's assigned to the mediator, the mediator will  
18 realize that we have a filing from the parents but we have a  
19 19 year old, and so we just need something indicating that  
20 the parents are pursuing claims on behalf of the student, and  
21 they have educational rights.

22 Any comments on this? Northern California?  
23 Southern California?

24 ADMINISTRATIVE LAW JUDGE BREEN: And Southern  
25 California, starting with committee members we have Ms.

1 Murai.

2 MS. MURAI: Yes, I wanted to make a motion to see  
3 if maybe OAH can create a form letter that parties may use.  
4 Because I used one but it's been challenged at times, and  
5 then ultimately once we get to mediation it's -- the mediator  
6 -- it doesn't become an issue, but I'm just wondering if  
7 maybe -- I know that you guys have some samples forms that  
8 you use, and so then there won't be an issue as to what  
9 (inaudible) you want.

10 ADMINISTRATIVE LAW JUDGE KOPEC: So you're  
11 suggesting that we develop a form that can be used; is that  
12 what you're suggesting?

13 MS. MURAI: Yeah, that all parties will adhere to  
14 and will not challenge. Because to me -- the form that I use  
15 shouldn't be challenged, but it is often. So I just -- I was  
16 suggesting, perhaps, that -- you know, and I can forward the  
17 forms that I generally use, but I'm just -- to me that seems  
18 that that would alleviate that problem.

19 ADMINISTRATIVE LAW JUDGE KOPEC: So I'm just --  
20 sort of thinking aloud that -- you know, the parent --  
21 usually the parent would be -- usually be -- have  
22 guardianship, either a limited -- I mean, conservatorship,  
23 either a limited conservatorship that expressly gives  
24 educational rights, or a general conservatorship that  
25 includes educational rights as a matter of law, so if that's

1 the case we would need -- you know, the letters, or you need  
2 something signed by the student giving the educational  
3 rights. So I'm not quite sure what kind of form would work.

4 MS. MURAI: I think that's what I'm more leaning  
5 towards. I use a form that the adult student signs, but then  
6 there's always an issue of well why isn't there a  
7 conservatorship? And as the IDEA says that the child doesn't  
8 have to be under a conservatorship to assign their  
9 educational rights to their parents.

10 And so I think just to avoid that ambiguity, and  
11 litigation on that matter, if there could be -- I mean, it's  
12 really just (inaudible) I don't have the form on me, but just  
13 using, I believe, it's the Government Code that I use, and  
14 the (inaudible) Education Code that (inaudible) to that  
15 pertains to that issue. That's just my suggestion.

16 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. So would  
17 you like to do a formal recommendation for the committee? Or  
18 just the nature of a comment from you personally at this --

19 MS. MURAI: No, I made a motion that if OAH can  
20 create a form letter that parents may use, or parties may  
21 use, that -- to address that issue.

22 ADMINISTRATIVE LAW JUDGE KOPEC: To address the  
23 appointment of educational rights.

24 MS. MURAI: (Inaudible), sorry, yes.

25 ADMINISTRATIVE LAW JUDGE KOPEC: All right. Is

1 there a second?

2 MS. MALLOY: I'll second.

3 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Second by  
4 Ms. Malloy. Any further comment in Southern California?

5 ADMINISTRATIVE LAW JUDGE BREEN: Okay. And we have  
6 Mr. Economou. We will start with committee first. Go ahead,  
7 Mr. Economou.

8 MR. ECONOMOU: Well, it seems like the issue that  
9 we're trying to address is that notice be provided directly  
10 to OAH upon the initial filing; am I correct in assuming  
11 that?

12 ADMINISTRATIVE LAW JUDGE KOPEC: Yes.

13 MR. ECONOMOU: Okay. So when we provide notice to  
14 OAH, shouldn't that automatically be sufficient to move  
15 forward? Or OAH would state that it's not sufficient at that  
16 point? Or is this just a kind of a form? Like just  
17 something -- I don't --

18 ADMINISTRATIVE LAW JUDGE KOPEC: Well --

19 MR. ECONOMOU: Some -- sorry, go ahead.

20 ADMINISTRATIVE LAW JUDGE KOPEC: If we get the  
21 appropriate documentation at filing there's no problem, but  
22 this is just something that I am suggesting -- we haven't yet  
23 started doing, but suggesting that we would begin doing,  
24 which is if we don't get the documentation indicating that  
25 the filer has educational rights, that we would basically

1 send something out saying that's -- this is -- we need  
2 documentation.

3 But it -- like I said, it's not going to hold up  
4 the filing, and things will go forward. It's just trying to  
5 get the documentation as -- sooner rather than later. But  
6 you're right; if that comes in with the filing then we don't  
7 have to bother asking for it because we already have it.

8 MR. ECONOMOU: I believe I'm doing the same -- a  
9 similar thing to what Ms. Murai's doing, but I -- I'm not  
10 running into the same issue. So -- but I definitely  
11 understand what you're saying.

12 ADMINISTRATIVE LAW JUDGE KOPEC: Right. Okay.

13 ADMINISTRATIVE LAW JUDGE BREEN: And we also had a  
14 request for comment from Ms. Johnson.

15 MS. JOHNSON: If the issue is a challenge to the  
16 documentation that's being provided, in my experience the  
17 only time the district challenges a letter, or other written  
18 documentation of a student assigning the educational rights  
19 to the parent, is if the district doesn't believe that the  
20 student has capacity to do so. And whatever type of form was  
21 used, that would still potentially be an issue. So I don't  
22 know if there a form, you know, that you could use that would  
23 automatically avoid any challenge to the assignment of  
24 educational rights.

25 ADMINISTRATIVE LAW JUDGE BREEN: And we have a

1 request for comment from Ms. Adams.

2 MS. ADAMS: I've run into that just a couple times,  
3 and one that seems to work well is to have the form  
4 notarized. And so that seems to kind of pass muster, so to  
5 speak, and I haven't had challenges. So that may be another  
6 approach. But I think -- are you speaking of a challenge by  
7 the opposing counsel, right?

8 MS. MURAI: Yeah. It could be -- yeah. I mean,  
9 one -- I mean, just -- I'm just trying to think of how much I  
10 can say without -- I mean, like there -- like some of the  
11 examples and the challenges is one, maybe the child isn't yet  
12 eligible, and (inaudible) that even if they're (inaudible) by  
13 the adult is giving their educational rights to the parent,  
14 so that shouldn't be a challenge as to whether or not an  
15 adult can sign it, since obviously the school district  
16 doesn't even believe that the child is eligible for special  
17 ed.

18 Another is a time -- is a case where they were just  
19 -- the form, I think, is a challenge -- it might have been a  
20 challenge as to whether or not there needs to be a  
21 conservatorship, but that's very rare. It's more that the  
22 form -- it's just a challenge over that. And honestly, once  
23 it gets to mediation, and a mediator judge looks at it, that  
24 -- the challenge is diminished right away.

25 But I think part of the problem is that -- not, at

1 least with the district that I work with, at the resolution  
2 session, the person that I'm dealing with the district is not  
3 an attorney, and so may not be familiar with that form. But  
4 -- and then tries to end the resolution session saying that  
5 the child isn't here and we can't go forward. Things like  
6 that that are very unproductive.

7           So I just thought that maybe a simple resolution  
8 would be to create a -- you know, a form letter that is, you  
9 know, taking into consideration, obviously if it's a  
10 conservatorship, the proper documentation would be filed.  
11 But if it's more of an issue that they're trying to exercise  
12 the IDEA where the child can appoint their parent, or whoever  
13 they feel is appropriate, then that form could be used  
14 (inaudible).

15           ADMINISTRATIVE LAW JUDGE BREEN: And Ms. Dalton?

16           MS. DALTON: Yeah, I agree with Ms. Johnson; I have  
17 run into that issue several times in the past with capacity  
18 of the student signing, but also problems with, you know,  
19 it's an agreement to assign rights from one person to  
20 another, so both parties need to sign it, and it should be  
21 notarized. So I've run into those kinds of problems as well.

22           I don't know if there's a form that can be  
23 developed to solve all those problems, but that's -- those  
24 are the issues that we've run into.

25           ADMINISTRATIVE LAW JUDGE KOPEC: Any other comment

1 in Southern California?

2 ADMINISTRATIVE LAW JUDGE BREEN: Do you want to  
3 take public comment?

4 ADMINISTRATIVE LAW JUDGE KOPEC: Not yet.

5 ADMINISTRATIVE LAW JUDGE BREEN: Okay. Any other  
6 committee comment? Okay. No more committee comment.

7 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. How about  
8 committee members in Northern California? Ms. Broussard?

9 MS. BROUSSARD: My concern isn't when you've got --  
10 I think I'm going to (inaudible) a little bit -- when it's --  
11 it's not when there's conservatorship papers, and there's  
12 other legal documentation, that if -- and I'm going to our  
13 obligation to help support unrepresented parents, and  
14 unrepresented students. If they've got an attorney, I'm not  
15 worried about that part. They can figure out the forms; they  
16 can do it.

17 But if one of the pieces you're going to require  
18 upon filing is a documentation that the rights have been  
19 transferred, if it's a conservatorship, or something else, or  
20 a guardianship; that can just be attached. People would know  
21 what those are.

22 But in cases where there hasn't been a formal  
23 transfer of rights through the court system, I think that it  
24 might not be unreasonable to have an expectation to what  
25 those people would have to present to you. Because I think

1 otherwise what happens is, is you've got people guessing.  
2 And then you've got legal challenges to it, and a bunch of  
3 other stuff.

4           It seems like to me it's -- I've had motions for  
5 this go through OAH, and there's been definitive answers that  
6 come back from OAH to me that say this should be the content  
7 of the transfer of rights. Like it needs to have X, Y, and Z  
8 in this piece. Very hard, as we talked about with the search  
9 engine, for an unrepresented parent especially to figure out  
10 where they would find that decision -- but not only that,  
11 it's an order so it's -- you know, it's just hard.

12           So because OAH has already documented, at least in  
13 a decision I've seen, what the content ought to be, it seems  
14 like a blank form, or a link to that case, or a -- some  
15 something that an unrepresented parent or student could just  
16 know that if they followed these directions -- it's not  
17 saying that it would survive a challenge by the district for  
18 legal -- for reasons, but it would meet the basic content.  
19 So for that reason I think it's a good idea, but in a --  
20 probably a more limited scope.

21           ADMINISTRATIVE LAW JUDGE KOPEC: Any other comment?  
22 Yes.

23           UNIDENTIFIED FEMALE: The Virginia Department of  
24 Education has, actually, a blank boiler plate document, a  
25 special power of attorney for educational rights only that

1 they have on their website for parents to access.

2 ADMINISTRATIVE LAW JUDGE KOPEC: (Inaudible) yeah,  
3 I appreciate that. Maybe it would be worthwhile taking a  
4 look at it if we're going to go ahead and provide a form for  
5 folks. Thank you. A great suggestion.

6 Any other committee members? Any public comment in  
7 Sacramento? No? All right.

8 Judge Breen, we're ready for the public comment in  
9 Southern California.

10 MS. CAMPBELL: What (inaudible) is that  
11 unrepresented parents at any level, at the local school  
12 level, no less in the process of trying to file due process  
13 on their own, they're ill-advised and do not know where to go  
14 to get such paperwork or guidance in order to have their  
15 child assign over educational rights if that's what they wish  
16 to do.

17 Not only that, students that are 18 years old, in  
18 my opinion, don't have a clue where to go to get such  
19 documentation from the school if they wish to sign over their  
20 educational rights to their parents. Or from what I hear  
21 from administration is, oh you can go to the main office, or  
22 you can go to the counseling office. It's very vague what  
23 needs to occur. And I don't see that students have support  
24 in that process.

25 ADMINISTRATIVE LAW JUDGE BREEN: Thanks, Ms.

1 Campbell. Any other public comment here in So Cal? Yes, and  
2 Mr. Campbell?

3 MR. CAMPBELL: Yes. I'm an advocate, educational  
4 consultant, (inaudible) intern. A suggestion in IEP's is  
5 that in a transition IEP or before a child turns 18, say  
6 there's an addendum meeting, any sort of meeting prior to the  
7 transition to the age 18, that it be notified to the parents  
8 of such documents existed. Thank you.

9 MR. ATWOOD: Yeah, I got --

10 ADMINISTRATIVE LAW JUDGE BREEN: And anyone else?  
11 Mr. Atwood, you had something?

12 MR. ATWOOD: Yeah, I would. I guess there's a  
13 couple things. First of all, I can see that the law allows  
14 anybody to be assisted by people that are knowledgeable. So  
15 apart from the transfer of educational rights, the kids  
16 (inaudible) have a parent or anybody like that represent  
17 them, I don't see how they should be doing (inaudible).

18 If the district wants to say that the kid lacks  
19 capacity, then the district would have to (inaudible) or  
20 somewhere, but certainly the Office of Administrative  
21 Hearings doesn't have jurisdiction to decide whether a kid  
22 has capacity or not. So if the district issued a challenge  
23 like that, I think (inaudible), and in the mean time the kid  
24 can be represented or assisted by anybody that he wants  
25 (inaudible).

1 I don't see why -- and there are a few (inaudible).  
2 Either you transfer the educational rights, or this is a  
3 knowledgeable person who's assisting the (inaudible) kid.

4 ADMINISTRATIVE LAW JUDGE BREEN: Okay. Any other  
5 public comment? Okay. That was it for the public comment in  
6 Southern California.

7 ADMINISTRATIVE LAW JUDGE KOPEC: All right. Any  
8 further comments by members before we take a vote? No?  
9 Okay. Let's take the vote in Southern California.

10 Those in favor of the recommendation that OAH  
11 develops a form so that -- by which an adult student can  
12 assign educational rights. All in favor?

13 ADMINISTRATIVE LAW JUDGE BREEN: Okay. We have  
14 four in favor; Ms. Murai, Ms. Lally, Mr. Cochran, and Ms.  
15 Economou.

16 ADMINISTRATIVE LAW JUDGE KOPEC: And opposed?

17 ADMINISTRATIVE LAW JUDGE BREEN: We have three  
18 opposed; Ms. Johnson, Ms. Adams, and Ms. Dalton.

19 ADMINISTRATIVE LAW JUDGE KOPEC: In Northern  
20 California?

21 UNIDENTIFIED FEMALE: I have a question. I hate to  
22 -- I'm not good at the parliamentary thing.

23 ADMINISTRATIVE LAW JUDGE KOPEC: Okay.

24 UNIDENTIFIED FEMALE: I don't get to ask a  
25 question? You tell me; I don't want to screw it up.

1 ADMINISTRATIVE LAW JUDGE KOPEC: What's your  
2 question?

3 UNIDENTIFIED FEMALE: Well, I had thought that the  
4 recommendation was contingent upon your requiring that at --  
5 when it was filed, not that it was stand alone. So I thought  
6 that we were talking about in the context of OAH considering  
7 a policy that would require the upfront -- or that would  
8 request the upfront documentation, which to me is really  
9 different than starting this from scratch. So I just wanted  
10 to clarify that part of it.

11 ADMINISTRATIVE LAW JUDGE KOPEC: That's how I  
12 understood it.

13 UNIDENTIFIED FEMALE: Okay.

14 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah. That's how  
15 I understood it.

16 UNIDENTIFIED FEMALE: Okay.

17 ADMINISTRATIVE LAW JUDGE KOPEC: This is all  
18 prompted by the (inaudible) that OAH was going to want to  
19 request, if we don't already have something --

20 UNIDENTIFIED FEMALE: Okay.

21 ADMINISTRATIVE LAW JUDGE KOPEC: And this would be  
22 a vehicle by which we could assist parties, and obviously aim  
23 towards folks who are not represented (overlapping) --

24 UNIDENTIFIED FEMALE: I just wanted to make sure  
25 that it was kind of a dependent --

1 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah.

2 UNIDENTIFIED FEMALE: Okay.

3 ADMINISTRATIVE LAW JUDGE KOPEC: So Northern  
4 California, those in favor? We have Ms. Broussard, Ms. Bean,  
5 Ms. Sherman, Ms. PEITSO, Mr. Rezowalli, Ms. Malloy, and Ms.  
6 Gutierrez. And those opposed? We have Ms. Soukup. Okay.  
7 Thank you very much.

8 The next item is availability of record of pre-  
9 hearing conference. From time to time we will receive a  
10 request on behalf of a parent or student for a free copy of -  
11 - usually they want the audio recording a pre-hearing  
12 conference. And usually this will happen shortly after the  
13 pre-hearing conference, but before any hearing is held.

14 And OAH has evaluated this and talked about it, and  
15 to be honest there have been times when on a case by case  
16 basis we have provided -- again, usually a copy of the CD,  
17 the audio recording of a pre-hearing conference. But we want  
18 -- we have decided that we are no longer going to provide a  
19 copy of an audio recording, or transcript of a pre-hearing  
20 conference, free to a parent or student prior to the  
21 conclusion of the hearing.

22 So the analysis is that the provision, both under  
23 Federal and State law, that a parent receives a free copy of  
24 either the audio recording or a transcript of a hearing that  
25 pertains to the hearing. And so if there -- at the -- at the

1 conclusion of the matter if you request your free transcript  
2 or audio recording, you will receive the pre-hearing  
3 conference as part of the hearing record. But that we will  
4 not provide a copy of the pre-hearing conference record, or  
5 transcript, prior to the conclusion of the hearing.

6 Any questions, comments in Northern California?

7 Ms. Malloy?

8 MS. MALLOY: Can (inaudible)?

9 ADMINISTRATIVE LAW JUDGE KOPEC: I'm sorry?

10 MS. MALLOY: Can that (inaudible) parents record?

11 ADMINISTRATIVE LAW JUDGE KOPEC: That's on a case  
12 by case basis with the ALJ at the pre-hearing conference, and  
13 the same thing for the hearing. I personally have always  
14 allowed it (inaudible) the understanding that the official  
15 record will come from the Office of Administrative Hearings.

16 MS. MALLOY: Okay.

17 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah, but that's a  
18 case by case basis with the ALJ who's presiding.

19 MS. MALLOY: And under what circumstances -- a  
20 follow up question -- under what circumstances could we  
21 record if we would like an audio copy of the pre-hearing  
22 conference?

23 ADMINISTRATIVE LAW JUDGE KOPEC: Well --

24 MS. MALLOY: Not an official copy, but under what  
25 circumstances --

1 ADMINISTRATIVE LAW JUDGE KOPEC: We are -- well,  
2 you can pay for it. Anyone can -- like, after the pre-  
3 hearing conference is conducted if either party wants to pay  
4 for either a copy of the audio recording, which we burn to a  
5 CD, or have someone transcribe it and get a hard copy  
6 transcript of it, either party can request that for the  
7 regular price for transcripts, which is included on our  
8 website.

9 It's usually -- I believe it's \$5 per CD, and  
10 there's a per page cost for the transcript, depending upon  
11 how quickly you want it. But we will no longer provide it  
12 free to parents at -- after the pre-hearing conference. You  
13 will get it as a result -- after the hearing, as part of the  
14 entire record.

15 Any other comments in Northern California? How  
16 about Southern California?

17 ADMINISTRATIVE LAW JUDGE BREEN: Any comments from  
18 committee members? Ms. Adams?

19 MS. ADAMS: Just a question. If a party would like  
20 to informally record a pre-hearing conference should we  
21 include that in the pre-hearing conference statement? What  
22 amount of notice, I guess, do you need? That would be my  
23 question.

24 ADMINISTRATIVE LAW JUDGE BREEN: And did everyone  
25 hear that? The question was if there's a request to record

1 what kind of notice would be good?

2 ADMINISTRATIVE LAW JUDGE KOPEC: I think putting it  
3 in your pre-hearing conference statement would be advisable.  
4 That way everybody knows and it can be addressed at the pre-  
5 hearing conference.

6 Anything else?

7 MR. ATWOOD: I have a question.

8 ADMINISTRATIVE LAW JUDGE BREEN: Hold on -- are we  
9 ready to move on to public?

10 ADMINISTRATIVE LAW JUDGE KOPEC: Sure.

11 ADMINISTRATIVE LAW JUDGE BREEN: Okay.

12 ADMINISTRATIVE LAW JUDGE KOPEC: If committee -- if  
13 nothing further from any of the members.

14 ADMINISTRATIVE LAW JUDGE BREEN: Okay. Nothing  
15 further from So Cal members.

16 Mr. Atwood, member of the public, you had a  
17 question?

18 MR. ATWOOD: Yeah, my understanding that -- what I  
19 heard was that if we cough up five dollars that we are  
20 entitled to the audio of the pre-hearing conference  
21 (inaudible), right?

22 ADMINISTRATIVE LAW JUDGE BREEN: The question was  
23 can -- parties can get the PHC recording prior to the  
24 conclusion if they pay for it?

25 ADMINISTRATIVE LAW JUDGE KOPEC: That's correct.

1 MR. ATWOOD: Okay. And that's good. Because it's  
2 been up to the discretion of the ALJ up to now, so  
3 (inaudible) we've asked for it and been refused, so I like  
4 that. We pay the five dollars; we get it (inaudible).

5 ADMINISTRATIVE LAW JUDGE KOPEC: It was my  
6 understanding that if anyone wanted to pay for it you could  
7 get it. The only question that I was ever aware of was then  
8 we had families requesting it for free. So the idea that you  
9 can get it, purchase it, it shouldn't be new. But at least  
10 we can clarify it, that if you want to get it and pay for it,  
11 you can get it.

12 MR. ATWOOD: Could that go on the website?

13 ADMINISTRATIVE LAW JUDGE KOPEC: I don't know.

14 MR. ATWOOD: Maybe in the Q and A, or you know,  
15 somewhere, so we'll know that they can pay their five dollars  
16 and get it?

17 ADMINISTRATIVE LAW JUDGE KOPEC: I'm sorry?

18 ADMINISTRATIVE LAW JUDGE BREEN: He said -- I'll  
19 rephrase, I'm closer to the microphone. Mr. Atwood was  
20 making the suggestion, was whether you could put it n the  
21 frequently asked questions, or provide that information  
22 somewhere on our website, that you know, basically explain  
23 that a free copy is only available at the conclusion of the  
24 hearing but that parties could pay for a -- pay for audio  
25 recording prior to conclusion of the hearing.

1 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah, I was  
2 planning on doing that. Because I looked at the information  
3 that was on the website in preparation for the meeting, and  
4 it does need to be updated.

5 MR. ATWOOD: I'm happy.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Good. Glad to  
7 hear that. Anything -- any public comment in Northern  
8 California? Okay.

9 The next item is status conferences. We currently  
10 schedule status conferences most frequently in connection  
11 with a settlement that needs to go to the school district  
12 governing board for approval before it can be finalized, and  
13 before the party, the filing party, is willing to withdraw or  
14 dismiss. And status conferences are scheduled on Wednesday,  
15 and they are usually scheduled two weeks after the board  
16 meeting.

17 This is, I guess, is another plea, or  
18 encouragement, to the parties that -- that assuming the  
19 matter goes to the board as scheduled, and the matter is  
20 approved, that the school district or representative would  
21 promptly notify the parent, or the representative for the  
22 parent, and then once getting that verification that the  
23 filing party would promptly submit either a request to  
24 dismiss or a withdrawal to OAH.

25 The expectation is -- the hope is that most status

1 conferences will be vacated because it will go to the board  
2 as expect, it will be approved as expected, everybody will be  
3 notified, and the filing party can then either withdraw or  
4 dismiss, and that upon doing so we will vacate the dates, and  
5 everybody can go on their way.

6           What we have been starting to do is make telephone  
7 calls usually on the Monday before to jog people's memory to  
8 hopefully take care of this. I know from time to time there  
9 have been occasions when, for whatever reason, the item  
10 doesn't -- the settlement doesn't got to the board, or the  
11 board was not able to deal with it as scheduled.

12           But I would hope that -- if that were to happen  
13 what I would request is that -- and so if that -- the board -  
14 - it's then going to go to a board meeting after the  
15 scheduled status conference, that the parties would then get  
16 together and agree to move the status conference.

17           Because if for some reason it looks as though the  
18 paperwork can't -- something happened so that it can be  
19 vacated prior to the status conference, if both parties can  
20 talk to each other and agree to move the status conference, I  
21 would encourage you to do that. Again, with the expectation  
22 that everything will be taken care of in the second scheduled  
23 status conference would be dismissed.

24           So we do make those phone calls, we find that the  
25 phone calls have been very successful, in terms of getting

1 things off the status conference. But I think it would be  
2 great if we didn't have to make those phone calls and things  
3 were dropping away as they should in the ordinary course.

4 And also I know that I've heard from -- on behalf  
5 of parents that sometimes the -- they're not getting the  
6 verification from the school district that the board meeting  
7 has occurred and the board adopted it. And I've also heard  
8 from school district reps that sometimes they're clients  
9 aren't telling them.

10 So you can go back to whomever you need to go back  
11 to and indicate that OAH would really, really be happy if  
12 everybody's communicating that the board heard it, or didn't  
13 hear it, and the communication goes from the district to the  
14 student, and then things can be vacated. So -- and I know a  
15 lot of you are doing that, and we really appreciate your  
16 assistance in that regard.

17 Any comments in Northern California? Southern  
18 California?

19 ADMINISTRATIVE LAW JUDGE BREEN: Okay. No  
20 comments.

21 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Thank you  
22 all. And the last issue from OAH has to do with cross  
23 complaints.

24 I put this on the agenda because we have just very  
25 recently seen several filings that are in connection with a

1 already filed case, and they are being labeled as cross  
2 complaints, and when staff has contacted the attorney who  
3 filed them saying we don't take cross complaints, do you want  
4 to file a new complaint? A request for due process? And the  
5 response was no, we want a cross complaint. Well, unless  
6 anyone knows differently, we don't have authority for cross  
7 complaints.

8           So what we have done is we have not acted upon  
9 them, and then I have expected that the ALJ at the pre-  
10 hearing conference would discuss and let the party know that,  
11 in terms of that particular proceeding, the cross complaint  
12 doesn't have any impact. That you need to file your own  
13 complaint if you're requesting remedies on behalf of your  
14 client.

15           So because this is something fairly recently that  
16 has started happening, I just wanted to bring this up, let  
17 you know what OAH's view is, and I'm very interested in  
18 knowing if -- what comments you all might have on this. So  
19 any comments in Northern California? Ms. Broussard?

20           MS. BROUSSARD: I've seen a large increase in this  
21 in last few months, and the other piece -- I mean, I think  
22 the companion piece to it is when it's been served as a cross  
23 complaint -- I'll just say an impermissible cross complaint,  
24 they are serving the attorney of record in the original case,  
25 and not the actual petitioner.

1           And it's my understanding that when the district  
2 files a case against a student or parent they must serve the  
3 student or parent until such time as they are noticed that  
4 they are being represented by counsel in the new matter. So  
5 I think that that's just a companion piece to the cross  
6 complaint issue, because the cross complaint would obviously  
7 enter the same case, existing case with existing  
8 representation.

9           But when the -- it's filed as a new case there  
10 needs to be a new determination of representation in the new  
11 case. So what I'm seeing is a large uptick in case, and then  
12 an immediate attendant motion to consolidate, as if now maybe  
13 some of the word got out on the cross complaint issue, but  
14 it's really being framed as a cross complaint with an  
15 attendant motion to consolidate.

16           So the problem with that is, is when the new case  
17 is filed with a motion to consolidate, the motion to  
18 consolidate actually has a time limit on it that is prior to  
19 usually the scheduling order coming out in the case, so it's  
20 -- it makes it very difficult for parents, and quite frankly  
21 for me, to figure out what the order of response is, how one  
22 would even respond to that.

23           It seems to me that first a case has to be opened  
24 on the books before a properly noticed motion could be  
25 responded to. So I just think that that is a giant something

1 that needs to be addressed.

2 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Ms.  
3 Gutierrez?

4 MS. GUTIERREZ: And just on -- as an attorney on  
5 behalf of school districts, the way that you've described the  
6 process, I'm needing to file a new due process complaint  
7 instead of a cross complaint, is my understanding is that  
8 that's the proper process.

9 ADMINISTRATIVE LAW JUDGE KOPEC: Thank you.

10 MS. BROUSSARD: Yeah, and I wasn't talking about  
11 Marcy.

12 ADMINISTRATIVE LAW JUDGE KOPEC: Yeah. And just a  
13 bit of a response to Ms. Broussard, is that I've seen that as  
14 well, and then to further complicate it, we have NOI's  
15 happening. And so you have -- an NOI, you have a cross  
16 complaint or a new complaint, and a motion to consolidate,  
17 and it's like what -- I know, we -- I know staff has come to  
18 me and other PJ's, in terms of how do you sort this out, what  
19 happens? So I share your concern on that.

20 MS. BROUSSARD: It's just fraught with who do you  
21 give notice to about what, and I do think maybe some --  
22 actually on this issue maybe I will make a motion, which is  
23 that it may be that if we're seeing a greater uptick in this  
24 issue, that there does need to be something, either in the  
25 FAQ's or somewhere else, that just highlights the no cross

1 complaint new filing rule.

2 And at least if it has to be a new filing, then the  
3 motion to consolidate dies, at least for a little while, I  
4 would think. And that may help the process.

5 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Is there a  
6 second on Ms. Broussard's recommendation that this be set out  
7 in the FAQ's, or someplace else.

8 MR. REZOWALLI: I'll second.

9 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Thank you,  
10 Mr. Rezowalli. Now, Ms. Malloy, you had your hand up, but I  
11 don't --

12 MS. MALLOY: I did. You had mentioned the Office  
13 of Administrative Hearings does not have jurisdiction and  
14 will not take action that you've done in other instances, and  
15 whether or not that was a way to just quash it. I -- you  
16 know, you have the form out (overlapping) --

17 ADMINISTRATIVE LAW JUDGE KOPEC: Actually, that's a  
18 -- it's a good comment. I thought about doing this at the  
19 time, and the reason I didn't and basically deferred it to  
20 the ALJ conducting the pre-hearing conference was, to be  
21 honest, I thought well, maybe there's some law on this, maybe  
22 there's some precedent on this.

23 And it was basically because it -- I thought it was  
24 clear, but I could see -- I just was kind of puzzled, and  
25 since these were being filed by attorneys, at least all that

1 I'm aware of, I didn't want to just dismiss it without the  
2 possibility of allowing the ALJ at the pre-hearing conference  
3 to hear about this, or maybe ask for briefing on it, or  
4 something. So that's why.

5 I want to use that notice of no action form, and  
6 the words absolutely crystal clear like I indicated the claim  
7 about public damages where there's no argument that we would  
8 ever have authority over that.

9 MS. MALLOY: Well, even that would be useful in a  
10 civil action because it would say, you were supposed to go  
11 through the Office of Administrative Hearings first, and they  
12 say well, we did that and we received this no action letter.  
13 So that can actually be utilized --

14 ADMINISTRATIVE LAW JUDGE KOPEC: Well, no. Because  
15 you have to file with the agency against whom you're claiming  
16 damages, and in that particular case it would be the school  
17 district. So I felt on clear legal ground that there was no  
18 way that anyone could argue that this had anything that we  
19 needed to know about. And then we heard confirmation from  
20 the representative that that was true as well.

21 But anyway, very good suggestion. Any comments on  
22 Ms. Broussard's recommendation in Northern California? Okay.  
23 Turn it to Southern California.

24 ADMINISTRATIVE LAW JUDGE BREEN: Southern  
25 California committee, any comments? No comments from

1 committee members.

2 ADMINISTRATIVE LAW JUDGE KOPEC: All right. Any  
3 public members?

4 ADMINISTRATIVE LAW JUDGE BREEN: You want to open  
5 it up to public? Mr. Atwood, you had a comment?

6 MR. ATWOOD: Well, yeah, I would think that  
7 probably if OAH (inaudible) I would think. And but one  
8 little complication, as far as attorneys are concerned, and  
9 who they ought to notice (inaudible) if the party is already  
10 represented by an attorney the rules of professional conduct  
11 forbid them (inaudible). So we're asking a lot of the school  
12 (inaudible) attorney of record, even if it's -- yeah, maybe  
13 it's a (inaudible) matter, but is it really (inaudible) for a  
14 cross complaint in the present one. So you don't want to  
15 play the school attorney's (inaudible) play the rules of  
16 professional conduct.

17 ADMINISTRATIVE LAW JUDGE KOPEC: Any other public  
18 comments? Or committee comments in Southern California?

19 We have some committee members that want to comment  
20 up in Northern California but I don't want to move it off of  
21 Southern California without double checking.

22 ADMINISTRATIVE LAW JUDGE BREEN: It looks like no  
23 comments from Southern California.

24 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Northern  
25 California? Ms. Gutierrez?

1 MS. GUTIERREZ: Just how I handle the matter of the  
2 attorney representation is I just email the opposing counsel  
3 to ask them if they're representing a family in connection  
4 with this other matter, and it usually solves the problem, in  
5 terms of service. Ask them if they will accept service on  
6 behalf of the family.

7 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. Any other  
8 comment? Okay.

9 Ready to talk a vote on Ms. Broussard's  
10 recommendation in Northern California. All in favor? We  
11 have everybody. Okay. Any no opposed.

12 And in Southern California?

13 ADMINISTRATIVE LAW JUDGE BREEN: Okay. Those in  
14 favor of the suggestion that OAH include in the FAQ's, or  
15 somewhere on the website, the OAH rules regarding no cross  
16 complaints and that the better practice is to file a new case  
17 and seek consolidation. So we have all in favor.

18 ADMINISTRATIVE LAW JUDGE KOPEC: All right. Thank  
19 you. All right. We have reached the end of the items on the  
20 agenda, and we now have an opportunity for public comment  
21 both for those here with us in Northern and Southern  
22 California, and those on the web as well.

23 And so let's turn it to Southern California.  
24 Public comment?

25 ADMINISTRATIVE LAW JUDGE BREEN: Sorry -- anyone

1 from the Southern California public that wants to address  
2 something that's not on the agenda?

3 Yeah, I was (inaudible).

4 ADMINISTRATIVE LAW JUDGE BREEN: Mr. Atwood has  
5 something. You know, actually Mr. Atwood, that's fine. Why  
6 don't you come up here by so you'll be by a microphone? You  
7 can sit at the table with me. There you go.

8 Mr. Atwood is next to me now.

9 MR. ATWOOD: Well, there were a couple things. One  
10 of them is we seem to be having a problem with summary  
11 judgment (inaudible) various occasions. For example, I had a  
12 case where they granted summary judgment on a statute of  
13 limitation case.

14 The ALJ in the pre-hearing conference refused to  
15 entertain anything like that, and then later on when we asked  
16 for the recording of the PHC, we then got a sua sponte  
17 dismissal. One of them being that we -- along the statute of  
18 limitations without even hearing it. And indeed, one of the  
19 matters in the question was well within the two years.

20 So we never got a chance to get the thing heard as  
21 we were told in the pre-hearing conference would happen in  
22 the first place. And my understanding is a summary judgment  
23 is a no-no at the Office of Administrative Hearings. But  
24 we're getting those.

25 Another parent that I'm working with got the same

1 situation. She also got a -- she also got her claims  
2 dismissed without being heard in -- at Upland Unified. So  
3 this seems to be a fairly regular thing.

4 Another problem that that we seem to be seeing, and  
5 this is coming out in the statistics, is that non-attorney  
6 parents, and -- non-attorney represented parents really just  
7 can count on losing. The ALJ will find some way or another  
8 to rule against us.

9 You know, from a public policy standpoint, it means  
10 that people don't have any money, aren't going to get any  
11 kind of a deal. And so this enables the school to  
12 (inaudible) pipeline, because the people who don't have any  
13 money tend to be black folks, Latino folks; people like that.  
14 And the Office of -- for Civil Rights has found that that  
15 tends to be the case.

16 And it really is racially discriminatory to  
17 discriminate people who are not represented, and who  
18 therefore are poor. And this is a major problem (inaudible)  
19 statistics. It seems that California has the greatest  
20 proportion of findings against parents of any state at this  
21 point. Number one. There are -- there's something wrong  
22 with that.

23 Now, I celebrated my 60th birthday with you on May  
24 20, '11, at this meeting and we were told then -- I forget  
25 whether it was 15 out of 16 or 16 out of 17 reversals in the

1 Federal Court when it was appealed, which is also sort of  
2 suggestive.

3           So -- and the last point that somebody brought up  
4 is when things are overturned do judges get retraining in  
5 order to reflect the new case law? I think that that ought  
6 to happen, and I'm not sure that it does. And finally, this  
7 case settles -- in fact, this is the earlier one, we ask for  
8 a incident report maintained by the district -- no dispute  
9 about that -- to be produced, and we got a ruling, first off,  
10 that it was protected by attorney/client privilege. And  
11 secondly, that it was not maintained by the district because  
12 it wasn't in some central location.

13           Now the two later -- and the *Owassa v. Falvo* is  
14 clear, the Supreme Court said look while the kid has the  
15 possession of the paper, and he's graded it, it's not a  
16 student record. But we are specifically not ruling on  
17 whether or not it's a student record once it gets into the  
18 teacher's grade book. And this ALJ turned around and said  
19 well, they're maintaining it someplace, but they're not  
20 maintaining it in some central place, so they don't have to  
21 turn it over.

22           So in fact, I was looking at the legislative  
23 history and James Buckley, who was the sponsor for  
24 (inaudible) was very clear that the point of FERPA was to  
25 prevent school districts from being able to have secret

1 files. Or any agencies to be able to have secret files which  
2 they maintain.

3 And basically, this finding was that LAUSD is  
4 allowed to have secret files and incident reports, which are  
5 related to students. Totally blowing off the (inaudible)  
6 case which said look -- you know, (inaudible) or emails that  
7 fly through the system are not student records, but once they  
8 print it off and put it somewhere it is.

9 So we need -- it's a problem that Federal authority  
10 is just blown off. To reach the final point that, well, we  
11 don't want LAUSD to have to turn over their incident reports.  
12 The law is clear that they do. So it's not -- it isn't  
13 helpful all the way around to figure that the -- never mind  
14 the law, the districts ought to be able to get all sorts of  
15 deference. It's not even good for the districts.

16 If the districts have to cough up embarrassing  
17 information, then they won't do the kind of things that  
18 generate the embarrassing information in the first place.  
19 And it will be better for everybody all the way around.  
20 Fewer kids will be hurt, fewer cases, less expense, less mad  
21 people. So why don't we adhere the laws instead of trying to  
22 find a way to let the district hide things.

23 ADMINISTRATIVE LAW JUDGE KOPEC: Thank you, Mr.  
24 Atwood.

25 MR. ATWOOD: You're welcome, Judge.

1 ADMINISTRATIVE LAW JUDGE KOPEC: Any other  
2 comments, Southern California?

3 ADMINISTRATIVE LAW JUDGE BREEN: Okay. Members of  
4 the public, any other commentary?

5 No, Judge Kopec, no further.

6 ADMINISTRATIVE LAW JUDGE KOPEC: Any comments from  
7 Northern California public? I have a comment from the  
8 website, which I will just read.

9 When making IEP decisions about a child, what are  
10 the standards for determining the relative weight of the E-R-  
11 M-H-S assessment versus that of a licensed and credentialed  
12 educational psychologist who practices privately? How can  
13 parents be ensured that the ERMHS assessment is objective if  
14 the author is a school district employee? Is this being  
15 addressed? And what are some of the most common concerns or  
16 complaints that school districts have about S-P-E-D parents?  
17 How can parents get better at navigating the system?

18 And since this is an opportunity for comments,  
19 there's a series of questions and we -- it's not appropriate  
20 for us to respond, but I guess what I would do is if the  
21 author of these comments wants to contact me in care of the  
22 general number at OAH, which is 916-263-0880, I'd be more  
23 than happy to talk with the person.

24 Do we have any other comments? Okay. All right.

25 The last remaining items for us to disuses the

1 date, tentative date, of the next Advisory Committee Meeting.  
2 And I am proposing Friday, May 10th, 2013. I know that the -  
3 - the LRP conference, which is in the spring is the week  
4 prior in Long Beach. So I was aware of that as something  
5 that may be a conflict for some of those who are interested  
6 in both our committee and special education law.

7 So at this point, any major problems with May 10th?  
8 In Southern California?

9 ADMINISTRATIVE LAW JUDGE BREEN: No objections.

10 ADMINISTRATIVE LAW JUDGE KOPEC: Okay. So we will  
11 schedule this for May 10th, 2013. If we need to change that  
12 I will let -- post it on the website, send information out to  
13 our members as soon as possible.

14 Again, I want to thank you all for your  
15 participation. I know that many of you travel some distances  
16 to get here, and it was a good and very helpful meeting, and  
17 look forward to meeting again in the spring.

18 I will be sending out an email to the members  
19 asking for agenda items prior to that meeting, but as always  
20 I am available if we have agenda items you want to propose.  
21 You can either email me or Kay Stubbings (phonetic), or  
22 contact me in care of the OAH number. And with that we are  
23 adjourned. Thank you.

24 (Thereupon, the meeting was adjourned.)

25 --oOo--

**CERTIFICATE OF TRANSCRIPT**

This is to certify that I, Corinne Yanosy, transcribed the tape-recorded public meeting of the Special Education Advisory Committee dated November 9, 2012; that the pages numbered 1 through 94 constitute said transcript; that the same is a complete and accurate transcription of the aforesaid to the best of my ability.



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Corinne Yanosy  
December 10, 2012  
Statewide Transcription Services  
(916) 624-4300