

OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

OCTOBER 21, 2009  
10:00 A.M. - 2:00 P.M.

JOINT SESSION

LOS ANGELES, CALIFORNIA  
SACRAMENTO, CALIFORNIA

Official Transcriber: Terri Cohen

**COMMITTEE MEMBERS PRESENT:****NORTHERN CALIFORNIA**

Roberta Savage, Chairperson  
Tamara Brock  
Kate Chilcote  
Carl Corbin  
Dora Dome  
Christian Knox  
Eliza McArthur  
Stephen Rosenbaum  
Katie Russell

**SOUTHERN CALIFORNIA**

Jonathan Read, Chairperson  
Susan Burnett  
Jodi Bynder  
Daniel Harbottle  
Ines Kuperschmit  
Melissa Willmore  
Constance Taylor  
Steven Wyner

**COMMITTEE MEMBERS ABSENT:**

Patricia Gamboa-Fuentes

**ALSO PRESENT:**

Judge Richard Clark  
Judge Ann F. MacMurray  
Judge Tim Newlove  
Judge Bob Varma

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P R O C E E D I N G S

1  
2           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, let's go  
3 ahead and get started this morning. You guys all set down  
4 there? Anne?

5           **ADMINISTRATIVE LAW JUDGE MURRAY:** Yes.

6           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Welcome to  
7 the first meeting of the 2009/2010 Special Education OAH  
8 Advisory Committee. The meeting is being held via video  
9 conference in Sacramento and also at a location in downtown  
10 Los Angeles. And it's also being webcast live and so welcome  
11 to any of our webcast viewers who are out there as well.

12           I am Administrative Law Judge Richard Clark. I am  
13 the Presiding Judge for the Special Education Division for  
14 the State at the Office of Administrative Hearings. And I  
15 have down in Southern California, I have Ann MacMurray, who  
16 is the presiding judge in Van Nuys, and Tim Newlove who I  
17 haven't seen yet this morning but I think he's there, who is  
18 the presiding judge in Laguna Hills. And he is in the Los  
19 Angeles location, helping us run the meeting down there.

20           And here in Sacramento I have Administrative Law  
21 Judge Bob Varma who many of you may remember who was a  
22 lawyer, an attorney in the Special Education community up  
23 until the middle of August when he joined our office as an  
24 administrative law judge. And he's here helping me in  
25 Sacramento.

26           Before we get started with the actual agenda and

1 discussion, I wanted to take a minute and just read the  
2 Mission Statement for everybody who is here and also who is  
3 listening on the webcast and also the goals of the Committee.  
4 So you all keep that in mind and we'll talk about the  
5 discussion issues that we're going to talk about here today.

6           The Advisory Committee is a committee composed of  
7 parents, attorneys, advocates, school employees and other  
8 stakeholders, the majority of whom are parents and advocates  
9 for or attorneys for parents. The Advisory Committee  
10 provides non-binding recommendations to the Office of  
11 Administrative Hearings to improve the mediation and due  
12 process procedures utilized by the Office of Administrative  
13 Hearings.

14           And the goals of the Committee are to consult  
15 with -- OAH consults with the Advisory Committee in areas  
16 such as revisions to the OAH website, forms, documents,  
17 scheduling procedures, staff training, training materials,  
18 parent procedure manual, consumer brochure, outreach to  
19 families and students, and proposed revisions to the laws and  
20 rules in order to improve the delivery of fair and neutral  
21 services for dispute resolution.

22           So that's the mission of the Committee and also the  
23 goals that we have when we're here. So keep that in mind  
24 when we talk about the issues and we'll try to stay focused  
25 on our agenda items and when we take public comment or  
26 questions from the audience and the webcast as well, keep in

1 mind what the purpose of the Committee is and why we're here  
2 today.

3           Before we get started I think I need to thank some  
4 people who helped put this together. Here in Sacramento  
5 Samantha Alfonso and Laura Gutierrez. Samantha Alfonso is  
6 the executive assistant in Special Education and Laura  
7 Gutierrez is one of the staff supervisors so I appreciate  
8 their help getting this Committee going today and the  
9 documents and getting things posted to the website. Crystal  
10 Freeman helped with that as well. And also Elizabeth Gransee  
11 from the Department of General Services Public Affairs who  
12 runs the webcast and the staff in the Public Affairs  
13 Department who is helping us with the webcast right now and  
14 actually those are the gentlemen's names sharing the room  
15 with us so thank you for being here.

16           I think that takes care of the general comments. I  
17 have some more updates and some other comments and  
18 announcements that I'll make in a few minutes.

19           But before we get started we need to select a chair  
20 from each location and also a note-taker for each location.  
21 I had suggested that the Committee discuss that via email  
22 amongst themselves and we'll start here in Northern  
23 California because I think we talked before we went on the  
24 air and I think we had that resolved here. So who is going  
25 to chair our meeting in Northern California?

26           **MS. SAVAGE:** I think I will be.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** That's Roberta  
2 Savage.

3           **MS. SAVAGE:** And Christian Knox will be taking  
4 notes.

5           **ADMINISTRATIVE LAW JUDGE CLARK:** Great. Thank you.  
6 And how about in the Los Angeles location? Have you selected  
7 a chair for your meeting this morning? And if not you can do  
8 that real quick.

9           **MR. READ:** This is Jonathan Read. I think we've  
10 selected a chair and I think we've selected me.

11           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

12           **MR. READ:** Does that work for everyone? Great.  
13 And we have not selected a note-taker, so if are there any  
14 volunteers here who might have --

15           **MS. KUPERSCHMIT:** I don't mind.

16           **MR. READ:** Ines Kuperschmit will be our note-taker  
17 down here. Okay, we're all set.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, perfect.  
19 And then I just wanted to talk about in the past we have  
20 received recommendations in writing from the Advisory  
21 Committee. This last meeting we had in May we didn't  
22 actually receive written recommendations so I'm proposing  
23 that the Advisory Committee take notes and that you make  
24 actual written recommendations to OAH so that we can respond  
25 and post that on the website after the meeting so that the  
26 public and anybody who's looking at it and didn't attend

1 today will have an understanding of what was discussed and  
2 the recommendations the Committee made.

3 So does anybody have a problem with that, starting  
4 in Northern California, with making written recommendations  
5 to OAH at the end of the meeting? Not necessarily today but  
6 in a timely --

7 **MS. SAVAGE:** No.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** And how about you,  
9 Mr. Read down in Southern California?

10 **MR. READ:** Anyone? That good? Yes, we're good  
11 with it.

12 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Remember  
13 that we are on video conference so if you could start, when  
14 you speak say your name so that we know who is talking and  
15 also the people on the webcast, because I understand it's  
16 difficult to see people when you're watching on the webcast.  
17 And somebody is moving the camera down there so --

18 **MR. READ:** Yes, that's me. I'm just -- I need to  
19 remember to move the camera when I'm speaking and I'll try to  
20 remember to move the camera depending on who's speaking. But  
21 if you're not seeing the person that's speaking please remind  
22 me.

23 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. That sounds  
24 good. Let's see. Anything else preliminary before we get  
25 started with out introductory comments from myself and any  
26 other updates? Anybody have anything here in Northern

1 California? Mr. Rosenbaum?

2 **MR. ROSENBAUM:** Did -- I can't remember. I saw  
3 that email was exchanged about interpreters and I know that  
4 was a concern last time in Los Angeles in particular. Do we  
5 have interpreters on site or anyone who needs one?

6 **ADMINISTRATIVE LAW JUDGE CLARK:** There is an  
7 interpreter -- there should be an interpreter in the Los  
8 Angeles location but there is not an interpreter in  
9 Sacramento. We didn't know that we had a need for one up  
10 here, so --

11 **MR. ROSENBAUM:** Yes, I'm sure there is.

12 **ADMINISTRATIVE LAW JUDGE CLARK:** We had a request  
13 for an interpreter, Spanish interpreter in Los Angeles and I  
14 think there is one there or available.

15 **MS. SAVAGE:** Yes.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. And someone  
17 said yes so we do have that. Okay, and I guess we should go  
18 around the room as well and just introduce everybody. So I'm  
19 going to start in Southern California so Mr. Read, go ahead  
20 and start with your introductions and I see Ann MacMurray in  
21 the far corner there, so we don't we start with Anne and move  
22 through the room that way. So people know who our -- Ann,  
23 you've got to wave or something. Ann MacMurray, Tim Newlove  
24 is sitting next to Ann, there you go. Okay. We have some  
25 audience members but why don't we start with you, Mr. Read?  
26 Go ahead.

1           **MR. READ:** All right. My name is Jonathan Read.  
2 I'm with Fagen Friedman & Fulfrost.

3           **MS. BYNDER:** Jodi Bynder, Newman Aaronson Vanaman.

4           **ADMINISTRATIVE LAW JUDGE CLARK:** There you go.

5           **MS. WILLMORE:** I'm Melissa Willmore, a school  
6 psychologist.

7           **MS. BURNETT:** Susan Burnett, Psychologist Advocate.

8           **MR. TAYLOR:** Constance Taylor, attorney with  
9 Atkinson, Andelson.

10          **MR. HARBOTTLE:** I'm Dan Harbottle with Harbottle  
11 Law Group.

12          **MS. KUPERSCHMIT:** Ines Kuperschmit with Learning  
13 Rights Law Center.

14          **MR. WYNER:** My name is Steven Wyner. I'm with  
15 Wyner & Tiffany.

16          **ADMINISTRATIVE LAW JUDGE CLARK:** Great, thank you.  
17 Good morning. And here -- and we'll start with you, Ms.  
18 Savage.

19          **MS. SAVAGE:** Roberta Savage. I'm a students'  
20 attorney.

21          **MR. CORBIN:** Carl Corbin with School & College  
22 Legal Services representing LEAs.

23          **MS. BROCK:** Tammy Brock, parent.

24          **MS. MCARTHUR:** Eliza McArthur, McArthur & Levin,  
25 representing school districts.

1           **MS. RUSSELL:** My name is Katie Russell. I'm a  
2 parent at San Francisco Unified School District.

3           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm Richard Clark.

4           **MS. KNOX:** Christian Knox, Ruderman & Knox,  
5 representing students and their parents.

6           **MS. CHILCOTE:** My name is Kate Chilcote and I'm a  
7 parent.

8           **MR. ROSENBAUM:** Steve Rosenbaum, parent and student  
9 attorney for parents, Disability Rights California.

10          **MS. DOME:** Dora Dome with Miller Brown & Dannis.

11          **ADMINISTRATIVE LAW JUDGE CLARK:** I think that's it.  
12 We have Bob Varma who's off camera and then we have a few  
13 audience members as well here in Sacramento. Not a big  
14 turnout locally but there's a few. I have a sign-in sheet  
15 that I'll pass back.

16                Okay, just a couple of updates from OAH that I just  
17 wanted to make everybody aware of. First off, as most  
18 everybody knows, we had a pilot project that was in effect  
19 from January 1<sup>st</sup> until December 31<sup>st</sup> of this year. So because  
20 of the budget furloughs and some other issues, we suspended  
21 the pilot project effective August 1<sup>st</sup>. So effective August  
22 1<sup>st</sup> all Special Education judges are available to mediate and  
23 hear due process hearing cases. We don't have them broken up  
24 into two different groups any longer.

25                As many of you are aware, we also have the  
26 furloughs. The Governor's Executive Order applies to the

1 Office of Administrative Hearings and Special Education has  
2 been observing the furloughs since August 1<sup>st</sup>, which means  
3 we're closed the first three Fridays of the month. Any  
4 matters or documents that are served via faxination we  
5 process the next business day but we process them as if they  
6 were received on the furlough day. It counts as a day.

7           And starting on October 1<sup>st</sup>, the entire Office of  
8 Administrative Hearings is closed on the first three Fridays.  
9 So since August it was just Special Education and beginning  
10 October 1<sup>st</sup> the entire office is closed. It's created a  
11 hassle. The workload hasn't changed so we just have less  
12 time to do the work and our staff is doing a great job  
13 keeping up with the pace and handling the matters in a  
14 professional manner, which we appreciate their work on that.

15           One of the biggest things that's happened because  
16 of the budget is we've had to suspend the outreach program,  
17 the parent outreach program. It was just an outreach program  
18 generally, we did presentations at either parent locations,  
19 student locations or for districts if requested. But because  
20 of the budget and the furloughs we're not able to conduct  
21 those outreach programs and we're hoping that changes once  
22 things are settled, maybe after the start of the next fiscal  
23 year we'll be able to offer those programs again.

24           So those are a couple of the updates for OAH.  
25 Question?

26           **MR. ROSENBAUM:** I have a question on the pilot

1 project. Is there -- was any evaluation done or do you  
2 anticipate any on how effective that was with the segmenting  
3 the administrative law judges who were just mediating versus  
4 those hearing cases.

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Internally we've  
6 analyzed the data. We haven't produced any reports along  
7 those lines that are for public consumption. Generally we  
8 found that the average cost per case went up and the  
9 settlement and mediation actually went down. But the --

10 **MR. ROSENBAUM:** The number of settlements went  
11 down.

12 **ADMINISTRATIVE LAW JUDGE CLARK:** Correct. That  
13 actually occurred at mediation. But overall the settlement  
14 rate for the entire office overall remained the same. So  
15 those were at least three of the big things that stick out  
16 from the pilot project.

17 **MR. READ:** Judge Clark?

18 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes.

19 **MR. READ:** Is it possible for the person who is  
20 speaking to identify themselves before speaking so we can  
21 tell down here? It's not always visible.

22 **MR. WYNER:** All of us who are sitting to the side  
23 of Jonathan can't even see the screen really. At least I  
24 can't.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** That was Steve  
26 Rosenbaum speaking.

1           **MR. ROSENBAUM:** And Steve Wyner, I can't see you  
2 but I know that was you.

3           **ADMINISTRATIVE LAW JUDGE CLARK:** We had a logistics  
4 problem in Los Angeles this morning. Apparently double-  
5 booked the same room for both of us so we had to move to one  
6 of the Los Angeles courtrooms so it's a little different in  
7 Los Angeles than we were anticipating. So I appreciate  
8 everybody pulling that together down there and also just for  
9 your patience in having the camera move around the courtroom  
10 so we can see people.

11           So I wanted to say everything's new including the  
12 budget and furloughs and such. There's also some big news  
13 and some good things that have happened at OAH and I wanted  
14 to just update you on those as well.

15           The OAH User Guide is finished and complete.  
16 That's available on our website for people to review and  
17 download and I think it's a really -- turned out to be a  
18 really great instrument. We've had really good feedback on  
19 it so far and it provides a fairly comprehensive overview for  
20 anybody who's interested in how the Office of Administrative  
21 Hearings works and particularly for parents it provides a  
22 detailed guide as to how to present a case.

23           Whether you have an attorney or not it still gives  
24 you an overview of how you would present your case and what  
25 would be expected of you if you filed a due process case with  
26 the Office of Administrative Hearings.

1           We're proud of that guide and it took a lot of --  
2 took a long time to get together and a lot of people worked  
3 on that guide. And there's an introductory comment that  
4 lists everybody who participated. And I also thank the  
5 Advisory Committee from last year for all of your input and  
6 from the public as well because we had opened it up for  
7 public comment and received quite a few comments from the  
8 public. So we thank you all for that.

9           We're in the final stages of producing our OAH  
10 consumer brochure, which is more of a pamphlet that sort of  
11 gives an overview of the Office of Administrative Hearings  
12 and specifically Special Education Division. How to file a  
13 case, how to contact us, how to get an interpreter if you  
14 need one, but it's an abbreviated version and it also covers  
15 the highlights of what you would need to know about our  
16 Office and how to get in contact with us and get the  
17 information necessary to hand -- to file a case with us if  
18 necessary. And that is basically complete. We're having it  
19 translated and that also will be available on our website,  
20 hopefully within the next couple of weeks once the  
21 translations are complete.

22           Our on-line calendar has been updated to show --  
23 we've highlighted in two different colors the days that OAH  
24 is closed for holidays and furloughs or days that were  
25 unavailable for -- there's too many cases set or because the  
26 judges are all in training. But that will be available on

1 our on-line website so you'll be able to check those dates.  
2 Before you send in your request for dates you should take a  
3 look at the on-line calendar and see whether or not we're  
4 open and whether or not it's a holiday for our office.

5 And the final thing is our ALJs will be in training  
6 hosted by Seattle University. Again this year we're going to  
7 be in Irvine. And it will be held from November 16<sup>th</sup> through  
8 the 19<sup>th</sup>, like I said by Seattle University. No hearings or  
9 mediations will be scheduled that week at all. We've invited  
10 all of our pro tems to attend the training as well. So  
11 that's where our training will be.

12 I will provide -- I think Roberta, Ms. Savage, I  
13 think you asked for a copy or at least something about it and  
14 I guess I can do something if you need more information.

15 **MS. SAVAGE:** Thanks.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** That pretty much  
17 covers the updates and announcements from Special Education  
18 and OAH at this point. Does anybody have any questions or  
19 comments before we get started with our agenda? Anybody from  
20 Southern California?

21 Hearing none, anybody here in Sacramento?

22 Okay, let's go ahead and move on to our agenda  
23 then. The agenda was set in conjunction with solicited  
24 comments and input from the Advisory Committee and also once  
25 we had the input topic the presiding judges had preselected  
26 the agenda items it was keeping in mind what the goals and

1 mission of the Advisory Committee, so some people made some  
2 suggested topics that weren't included because we didn't feel  
3 like they really fit the mission.

4           But if you have questions or concerns about some of  
5 those issues you can still contact me after the meeting and  
6 I'll address and talk about any issues or concerns you have  
7 with our process and how our judges are handling some of the  
8 cases.

9           So the first thing I wanted to talk about was just  
10 generally our hearing process. And there was a question  
11 about our prehearing conference orders and I think this was  
12 brought -- you had suggested a topic about that, so why don't  
13 you tell us what your concern was and how OAH could change  
14 the prehearing conference order to be more helpful.

15           **MS. BROCK:** Well, I've seen a number of different  
16 preconference hearing documents and they vary greatly and one  
17 in particular that I saw was terrific. Very simplistic but  
18 really gave the information clearly to both sides. Whereas  
19 other documents have either not provided that or did it so  
20 that both parties, especially an unrepresented parent, could  
21 understand it.

22           And then I saw that the hearing officer really  
23 followed that, you know, the rules in that document. And I  
24 thought, you know, they vary from hearing officer to hearing  
25 officer and thought, wouldn't it be great if we just looked  
26 at ones that were really good and came up with a consistent,

1 you know, consistent information to the parties.

2 **ADMINISTRATIVE LAW JUDGE CLARK:** I don't know how  
3 you want to -- chairs, do you want take over the discussion?

4 **MS. SAVAGE:** Jonathan, do you guys want to start?  
5 Did you get the gist of that?

6 **MR. READ:** Yes, we did hear that. And then I guess  
7 that housekeeping issue, I think our agenda has a little less  
8 than two hours of time allotted with thirty minutes at the  
9 end for public comment. And it's scheduled until 2:00.

10 So I think we have plenty of time to discuss these  
11 issues, just as long as we keep moving and so I would suggest  
12 that since we don't have huge audience participants in each  
13 office, to reserve comments from the audience that we open it  
14 up to that -- those as well. Just as long as we keep moving  
15 on our agenda items.

16 **MS. SAVAGE:** That's fine.

17 **MR. READ:** Okay. So I would open it up to the  
18 panel and the folks here down in Southern California if there  
19 are any comments on the prehearing conference orders.

20 **MR. WYNER:** This is Steven Wyner. I have a  
21 question. My question would be what was it about the one  
22 prehearing conference order that you thought was good that  
23 should be, are you suggesting should be like a framework or  
24 format for these types of orders?

25 **MS. BROCK:** What this one in particular, you know,  
26 there were several pieces of information that I thought were

1 just very well written. One had to do with evidence, how you  
2 cannot present additional evidence once you get to hearing  
3 unless you have, you know, good reason, whereas another  
4 document from an ALJ didn't have that information in there  
5 and the district was constantly bringing in documents that  
6 people -- followed the rule whereas another ALJ didn't have  
7 the rule and wasn't following the rule but I guess I'm not  
8 saying -- but I just, when I read that prehearing conference  
9 document I thought it was just so well written and so clear  
10 and I've seen four or five others that just didn't have  
11 sufficient information, especially when a parent isn't  
12 represented.

13 **MS. SAVAGE:** We have a comment from Steve Rosenbaum  
14 up here.

15 **MR. ROSENBAUM:** Yes, Tammi, so is there -- and that  
16 was pretty generic information that was in that order, not  
17 for something specific to that case?

18 **MS. BROCK:** Yes. Yes.

19 **MR. ROSENBAUM:** Can we recommend to the OAH that it  
20 adopt a format that's going to be parent-friendly? Because  
21 certainly if it's going to work for unrepresented parents,  
22 it's going to serve all purposes and that that be the  
23 recommended format for prehearing conference orders.

24 **MS. SAVAGE:** I guess I'm kind of surprised because  
25 I see the same one every time. So I thought there was a  
26 standard format that was currently being used. Because for

1 probably the last five or seven I've seen it always says the  
2 same thing. So I'm intrigued that there was one that was so  
3 different. I don't know. Do we have any --

4 **MR. READ:** Judge Clark?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, we do  
6 have -- this is Richard Clark speaking. We do have a fairly  
7 standard template that we've used and most judges just follow  
8 that standard template. But as over time people add in,  
9 judges add in their own ideas of things they've seen from  
10 their own hearings so there could be judges who have added  
11 things to prehearing conference orders because they find it  
12 helps in their particular cases.

13 So I don't think it would be too difficult to sort  
14 of canvas our judges and compile a more comprehensive  
15 template so that people are using more information if it  
16 turns out that's a good idea. So if that's the  
17 recommendation we can certainly do that. It sounds like a  
18 good idea. Any further discussion on that? Ms. McArthur  
19 here?

20 **MS. MCARTHUR:** Just a question. Eliza McArthur. I  
21 wonder if it would be worthwhile since you, Tamara, have  
22 found something that you thought was particularly exemplary  
23 of the point you're making, that she provide a redacted copy  
24 and perhaps that would help in that process. Because it  
25 seems like its extra information rather than not following  
26 that particular format.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Is that -- you  
2 mean provide it to the Committee or have her send that to me  
3 so I can contact the Judge or however you want to do that?

4           And I can also provide it to the Committee as well  
5 if you make it available to me.

6           **MS. SAVAGE:** Yes, I think that -- I like that.  
7 Anything from Southern California on it?

8           **MR. WYNER:** I think it's a good idea -- this is  
9 Steven Wyner. I think it's a good idea that we take a look  
10 at what Tamara thinks is good so we all have an idea of what  
11 she's talking about.

12           **MR. READ:** Right. We have a comment from --

13           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm sorry, from  
14 who?

15           **MR. READ:** From Janeen Steel.

16           **MS. STEEL:** I just was wondering, can we see the  
17 template? Because if the template that OAH is recommending,  
18 we don't know if it actually has everything that is in the  
19 kind of sample or model. So we may not be that far apart or  
20 maybe there is -- so is there a way that OAH can provide a  
21 copy to the Advisory Committee of the template?

22           **MS. SAVAGE:** Are you talking about both templates?  
23 The one that they currently use and then the one that Tammi  
24 is suggesting?

25           **MS. STEEL:** Right. Unless -- exactly. Because I  
26 don't know what OAH's template has on it and actually it may

1 have some of that information the judges are not -- they may  
2 be taking that information off.

3 **MS. SAVAGE:** Okay.

4 **MS. STEEL:** Right? So.

5 **MS. SAVAGE:** Right.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** So that would be  
7 part of your recommendation.

8 **MS. SAVAGE:** Right.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

10 **MS. SAVAGE:** And I think before we act on saying  
11 that this is what the form should look like, we would need to  
12 see both copies.

13 **MS. STEEL:** Okay.

14 **MS. SAVAGE:** Does anybody want to make a  
15 recommendation about that? I'm happy to. I recommend that  
16 the Committee obtain copies of both the current template used  
17 by OAH for prehearing conference order and then obtain a  
18 redacted copy of the order that Tammi Brock thinks is a  
19 better version of it and at our next meeting we talk about  
20 what the prehearing conference template should look like.

21 **MS. STEEL:** Second.

22 **MS. SAVAGE:** Any more discussion before we move on  
23 to a vote?

24 Okay. Let's take a vote. Who's in favor of the  
25 recommendation? Your hands.

1                   **ADMINISTRATIVE LAW JUDGE CLARK:** It appears  
2 unanimous.

3                   **MR. READ:** I think we're unanimous on that. I'm  
4 not sure we need to take a vote on all of these -- maybe if  
5 we just have a second and get a chance for people to voice  
6 some disagreement and we'll just go ahead and do it. Does  
7 that work?

8                   **MS. SAVAGE:** Sure.

9                   **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Then the  
10 next agenda item is request for electronic recording of  
11 hearings before the ALJ issues the decision.

12                   This is something that has come up a couple of  
13 times. I thought we had resolved this once and forwarded to  
14 the Advisory Committee because I think there was a consensus  
15 that people want access to the recording of the hearing. But  
16 I think we left it as a copy of the recording at the end of  
17 the case, which from OAH's perspective, the end of the case  
18 is when the decision is issued by the judge.

19                   And it turns out that the attorneys for students  
20 and the attorneys for districts want a copy to be able to  
21 access the electronic recording before they issue a closing  
22 brief or before the decision is issued.

23                   So I'm just looking for some guidance from the  
24 Committee when they think it would be appropriate to make an  
25 electronic recording available of the hearing. Right now  
26 we'll leave it as the end of the case and I've been following

1 that which has put me in loggerheads with some of the  
2 attorneys who've asked for copies of it before the decision  
3 is issued.

4 Because from my perspective the case is not closed  
5 until the decision is issued. So maybe at the close of  
6 evidence as opposed to at the close of the case, but --  
7 discussion or turn it over?

8 **MS. SAVAGE:** Let's start up here on this one.

9 **MS. BROCK:** Well, parents or attorneys use a really  
10 small recording device whereas OAH's device captures all of  
11 the microphones. So it's much better.

12 **MR. READ:** That's Tammi Brock speaking?

13 **MS. BROCK:** Tammi Brock. So it's a much better  
14 recording and it would be advantageous for both parties to be  
15 able to get a copy right away so they can review the hearing  
16 information prior to writing their closing statement. And  
17 from my perspective it only takes a couple of days to get a  
18 recording from OAH so I don't see anything wrong with getting  
19 it prior.

20 **MS. SAVAGE:** Eliza?

21 **MS. MCARTHUR:** McArthur. I have a question and  
22 that is, does it matter to OAH -- I'm trying to assess  
23 whether the process is somehow cumbersome. I mean it's  
24 always nice to have it but I think we need to consider both  
25 parties as well as the OAH process. Is that a problem for  
26 OAH?

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Generally when the  
2 judges finish a case we take their flash drive and we  
3 download that information to our system and that's the  
4 official record. Sometimes our judges go into back to back  
5 hearings so you don't have access to the flash drive right  
6 away.

7           It isn't something that I think -- it's not  
8 something that we can do in a day or two. It usually takes  
9 us a few business days to get that all turned around. But we  
10 do have access -- there's an issue about whether it's --  
11 you're requesting a transcript versus just the electronic  
12 recording and I think that was fairly clarified at the  
13 Advisory Committee before, that it was the electronic  
14 recording that you wanted, not a transcript. Because the  
15 transcript couldn't be available that quickly.

16           But I do think that it wouldn't be -- it's not  
17 really -- it is something that we should be able to do fairly  
18 timely.

19           **MS. MCARTHUR:** Okay.

20           **MS. SAVAGE:** I have -- the objection that I have  
21 raised before is if OAH is going to take that as the free  
22 copy that parents get, that they need to be aware that  
23 they're not going to get a transcript, that they're only  
24 going to get this recording and that makes -- that may make  
25 it so that we don't want a copy of it.

26           And so that was -- I think the last time OAH was

1 saying you would count that as the one free recording and I  
2 don't think that's -- if the case goes up on appeal I don't  
3 think that's a good idea to use that as our free recording.

4 **MS. BROCK:** Well, can't you set -- oh, Tammy Brock.  
5 Can't you specify that you will pay for this recording? And  
6 that you want the transcript free later -- at a later date?  
7 The transcript's only -- I mean the recording's only what,  
8 thirty, forty dollars?

9 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, I'm not sure  
10 how much the recording would be but I don't think it would be  
11 exorbitant. That's up to the Committee to decide how you  
12 want to process that because that is a concern about, you  
13 know, is that the copy of the transcript or is it a copy of  
14 the record that you're entitled to? So anybody --

15 **MS. SAVAGE:** Jonathan, do you guys have any  
16 discussion down there?

17 **MR. READ:** Yes, we do. Steven?

18 **MR. WYNER:** This is Steven Wyner. I think before  
19 we make a full decision on this we ought to take a look at  
20 Federal rules of evidence because we've recently researched  
21 this and I'm pretty sure that the only kind of transcript of  
22 the proceeding that can be admitted into evidence is one that  
23 has been certified by a court reporter.

24 So Judge Clark, when you say that the electronic  
25 recording is the official record, I would distinguish that  
26 from being the official transcript because we're not going to

1 be able to introduce into evidence an electronic recording to  
2 a Federal court proceeding. The electronic recording has to  
3 be transcribed and it has to be certified by a court reporter  
4 for it to be admissible.

5 So I agree with what Roberta was saying that I  
6 think that what we -- you know, there ought to be a charge or  
7 something, some nominal charge if you want to get a copy of  
8 the electronic recording after all of the evidence has been  
9 admitted and the testimony has been given. And then, you  
10 know, parents get a copy of the transcript for free and I  
11 guess attorneys and school districts who are requesting it  
12 have to pay the full price for the transcript.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. I'm sorry,  
14 we need to take a quick break. Apparently we're having some  
15 video difficulty with the webcast. So we're going to take a  
16 two-minute break and I'll let you know when we're back on the  
17 line.

18 **ADMINISTRATIVE LAW JUDGE CLARK:** We're going to go  
19 ahead and get started again with the meeting and the  
20 discussion. Let's see, Mr. Wyner, were you finished with  
21 your comment? I think you're muted down there. There we go.  
22 We're back on.

23 (Overlapping voices)

24 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. McArthur, go  
25 ahead.

26 **MS. MCARTHUR:** So my question, which we should be

1 able to clear up pretty quickly --

2 **MS. SAVAGE:** Can you speak louder so they can hear?

3 **MS. MCARTHUR:** Yes. Hi. It's Eliza. My question  
4 is whether the 1415 provision regarding the record actually  
5 utilizes the term transcript. I believe it does. A copy of  
6 the transcript is to be available to the parent free of  
7 charge, not just a copy of the record.

8 And I think just from plain meaning there is a  
9 substantial distinction. I've asked Judge Varma to produce a  
10 copy of the regs or the law so we could check. Would that  
11 help any?

12 (Overlapping voices)

13 **MR. READ:** We're having a hard time hearing you in  
14 Los Angeles.

15 **MR. ROSENBAUM:** We've lost our chair.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Anybody have any  
17 discussion, anything further down there while we're waiting  
18 on the reg?

19 **MR. ROSENBAUM:** Can --

20 **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Rosenbaum?

21 **MR. ROSENBAUM:** Can I make a comment? It seems to  
22 me that the reason for the audio record is to prepare a  
23 closing brief or if somebody needs it -- it's really for  
24 preparing the closing brief on either side.

25 And so I would think that that should be made  
26 available either at actual cost or one could even use one's

1 own flash drive at the conclusion of the hearing, I think,  
2 the taping of the evidence and secure it that way. Isn't  
3 that possible?

4 **MS. SAVAGE:** We talked -- I think we talked about  
5 that last time and there was an issue of like a security --

6 **MR. ROSENBAUM:** All right. So that the audio  
7 record be made available but that is not the transcript which  
8 later can be requested at no cost to parent side and at cost  
9 to the district.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Right. My request  
11 is -- it's fairly narrow. The question was when do you want  
12 the electronic recording available? At the end --

13 **MR. ROSENBAUM:** At the end of the evidence.

14 **ADMINISTRATIVE LAW JUDGE CLARK:** End of the  
15 evidence versus the end of the case.

16 **MR. ROSENBAUM:** Yes.

17 **MS. SAVAGE:** Is that what you guys down south are  
18 thinking, that the end of the evidence versus at the close of  
19 the hearing when the decision is written?

20 **MR. WYNER:** Yes, the close of testimony.

21 **MS. SAVAGE:** Yes.

22 **MR. CORBIN:** This is Carl Corbin. I had a follow-  
23 up on that. Are we then going to be charged for this and if  
24 so can OAH let us know how much it would be (inaudible) would  
25 be free.

1           **MS. BROCK:** And is it a standard fee no matter how  
2 long the hearing is or is it done by how many CDs you send?  
3 Or can you put it on a flash drive in a different computer  
4 that isn't a security breach?

5           **ADMINISTRATIVE LAW JUDGE CLARK:** We're not going  
6 to -- we won't be allowing anybody to access our computers  
7 with any flash drives, that's just not going to happen.  
8 So --

9           **MS. BROCK:** But after it's over and you download it  
10 somewhere else can you do a flash drive rather than  
11 (inaudible)? Can you use CDs that are --

12           **ADMINISTRATIVE LAW JUDGE CLARK:** Well, whatever  
13 your recommendation is, I will take that to our IT people and  
14 see but at this point I think it's a fairly standard charge,  
15 you know, and I don't know if it's per CD but I can clarify  
16 that. I can certainly get that information at the end of the  
17 meeting. But I think it's per transcript but I think it's  
18 typically one CD. I don't know what happens if it's more  
19 than one CD, so --

20           **MS. SAVAGE:** We have some comments from the web and  
21 I'm just going to go down the list.

22                   Why don't you recommend to parents that they can  
23 record the meetings at the same -- or the hearings at the  
24 time? What about audio hookups so parents can hook up to the  
25 recording at the hearing so that we're getting the same  
26 record -- I guess we would be getting the same recording as

1 OAH.

2           And then this is an email from a parent who is  
3 upset that the system is unfair and stacked against parents  
4 and wants equal access to counsel, witnesses, et cetera for  
5 families and students.

6           So I guess I've never thought of the hookup. I  
7 wonder -- I don't know what type of recording device would be  
8 required for us to somehow plug in to the recording that OAH  
9 is making. That would be interesting to find out.

10           **MR. READ:** Well, I'm going to venture to guess  
11 that -- I mean, this goes into the question that we're asking  
12 OAH, that we're not going to get an answer right here and  
13 right now.

14           So I would suggest that we document the question to  
15 submit to OAH, you know, our recommendation that electronic  
16 reporting be available to the parties as soon as possible  
17 after the close of testimony so that they can use that in  
18 preparation for the closing brief.

19           And along with that, if that's a possibility, to  
20 let OAH identify the charge and also the mechanism, the  
21 technological mechanism for providing that.

22           And then coupled with that, I'm hearing a request,  
23 although not strictly on the agenda item, for some direction  
24 from OAH on our ability to record due process hearings  
25 utilizing the party's own equipment as well as the  
26 possibility of having access to hook up to OAH's equipment

1 somehow.

2 And then Steve Wyner has a comment. Right there,  
3 give me a second.

4 **MR. WYNER:** My experience with recording due  
5 process hearings is that we typically include a section in  
6 our prehearing conference statement providing notice that we  
7 intend to digitally record or audio record the due process  
8 hearing. And we've never had any objection to any of that.  
9 We set up our own equipment and microphones so that it can be  
10 done.

11 I would have a concern about, you know, I guess  
12 this idea of can't we just hook into OAH. I would have a  
13 concern about that. You're talking about, you know, in  
14 depositions a lot of people do real time depositions where  
15 the court reporter's typing and you're sitting at your laptop  
16 and all coming up on the screen. That's one thing.

17 But, you know, in terms of this being an official  
18 record I just don't think it's a good idea to have third  
19 parties hooking up into OAH's system. It just creates a  
20 possibility that something can happen to the record, which  
21 would be unfortunate.

22 **MS. SAVAGE:** Dora Dome has comment.

23 **MR. READ:** Can you still hear us?

24 **MS. SAVAGE:** Yes.

25 **MR. READ:** All right, we have some extraneous noise  
26 coming from our speakers so --

1           **MS. SAVAGE:** We have a comment up here from Dora  
2 Dome.

3           **MS. DOME:** So the other question that I would have  
4 is how does accessing the transcript or the digital  
5 transcript before the briefs are due impact the timelines?  
6 Because this came up in a case and so the party that was  
7 requesting it wanted to delay the timelines waiting for OAH  
8 and then set the brief dates for another few weeks after they  
9 got the tape. And I would have -- I guess I would be curious  
10 how people feel about that.

11           In that particular case I had concerns about just  
12 further delaying the decision and how people think waiting  
13 for that, does it actually -- should we be stopping the  
14 timelines and continuing them, I guess? Waiting for that and  
15 giving more time for the briefs, or is that just -- you get  
16 it when you get it and the briefs are due on a particular day  
17 that it is set.

18           **MS. BROCK:** Perhaps having all the information up  
19 front of the cost you pay prior to the hearing or during the  
20 hearings so you don't have to first call OAH, then they get  
21 you a cost, then you have to send in a check and then you get  
22 your transcript, if you're able to pay up front knowing that  
23 you're going to want the copy, then it only takes a couple of  
24 days.

25           It's not -- I think, you know, it took three days  
26 total with my case. So you can get it fairly quickly once

1 you've given them the money. So -- but they have to  
2 calculate the money. So let's see if we can get maybe a firm  
3 cost of what it's --

4 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, I think --  
5 Richard Clark here -- I do think that the fee is fairly  
6 nominal somebody said and I don't think -- I think it's -- I  
7 think it might be around \$30. It's a fixed fee. It may be a  
8 little bit higher than that but it's not hundreds of dollars.  
9 So assuming that it's a fairly nominal amount, I don't have  
10 the exact figure here but I will be able to get that and post  
11 that on the web. I don't think that's going to be the, you  
12 know, the deciding factor whether it's too costly. It may be  
13 too costly for some people but it's not over -- it's not  
14 overly prohibitive from our angle.

15 **MS. SAVAGE:** Carl?

16 **MR. CORBIN:** Yes, I wanted -- this is Carl Corbin.  
17 I wanted to touch on Dora's comment. Yes, I have a concern  
18 with that also because districts are usually interested in  
19 getting -- and parents also, interested in getting a quick  
20 resolution of the decision. So if doing this process is  
21 going to extend the time period in which we're going to get a  
22 decision now, I do have some concerns with that also. And so  
23 I don't want this to be seen as we're going to be adding two  
24 weeks to every hearing decision. That's, I don't think,  
25 helpful.

26 **MS. BROCK:** We're talking about three days, not two

1 weeks.

2 **MR. CORBIN:** Well, if that's what we're talking,  
3 but I just --

4 **MS. SAVAGE:** Kate?

5 **MS. CHILCOTE:** Kate Chilcote. I would add a  
6 concern as a parent that I had all the information that I  
7 needed to proceed. And I think if we could come to an  
8 agreement on the time period -- I mean I hear what you're  
9 saying on delaying, but as a parent I would want to have all  
10 of the information available to me before the end of my case.  
11 And so if I didn't have a good recording or I needed that if  
12 I was representing myself, five days would -- or an extension  
13 of up to two weeks -- I think that that would be fair from a  
14 parent standpoint.

15 I mean I would think both parties would want all  
16 the information.

17 **UNKNOWN MALE:** I really think it's my -- I'm sorry,  
18 Judge Clark, go ahead.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** Richard Clark. I  
20 do think that some of it is discretionary with the judge. I  
21 mean it's really up to the judge how they want to handle  
22 closing briefs and we're going to talk about that a little  
23 bit later. It's one of the agenda items. So it is something  
24 that I think the parties should discuss with the judge at the  
25 hearing but however overall, if there's a specific format  
26 that the Advisory Committee thinks should follow, we can

1 certainly make that recommendation and we'll discuss it and  
2 consider it.

3 I don't think that delaying the case for purposes  
4 of getting electronic recordings is a good idea. But that's  
5 just my perspective. And I'm not speaking for anything other  
6 than I don't know that that's something we want to do is  
7 continue to delay cases for weeks while we just get a copy of  
8 an electronic recording. But that's, you know, something for  
9 you to consider and I don't think it takes a great amount of  
10 time. It would take a few business days at least, though.  
11 It's not going to be something you can get overnight.

12 **MS. SAVAGE:** Right. Jonathan?

13 **MR. READ:** Right. And I would just -- I'm not sure  
14 we can make a specific recommendation unless we know for sure  
15 how long it's going to take and for sure how much it's going  
16 to cost.

17 And that's why I suggest that with this agenda item  
18 we submit our request for information and then we keep this  
19 on the agenda for next meeting. And once we have the  
20 specifics then we can get into, you know, the type of notice  
21 that we would suggest in the prehearing conference and the  
22 type of effect it might have on the timelines.

23 **MS. SAVAGE:** Yes, I think that's a good idea. I  
24 did have -- I've got a -- there's a follow-up from the person  
25 who suggested the hook-up into OAH and they further suggested  
26 that you could use a splitter.

1           But I think Steve, just on a final note, I agree  
2 with your concern about having something possibly alter the  
3 record. The other concern I would have is that there have  
4 been a number of recordings that -- from OAH that have not  
5 been complete. And if we as students or districts are  
6 relying on that recording and therefore not making our own,  
7 sometimes our recording is the only recording that exists in  
8 the future.

9           So I still think it's good practice for the parties  
10 to record another backup and a potential harm solely relying  
11 on OAH.

12           **MS. BROCK:** I just -- this is Tammi Brock. I just  
13 want to clarify that all ALJs will allow recordings now  
14 because in the past some have not allowed recordings. So --

15           **ADMINISTRATIVE LAW JUDGE CLARK:** Is that a  
16 question?

17           **MS. BROCK:** Yes.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not sure.  
19 There's no -- we don't have a policy one way or the other.  
20 It's all discretionary with the judge. So.

21           **MS. BROCK:** well, can we make that a policy then?

22           **ADMINISTRATIVE LAW JUDGE CLARK:** It's all -- the  
23 recommendations from the Committee, it's all up to you how  
24 you want to do that. I can't give you any answers right now.  
25 I'm just looking for your input on the items.

26           **MS. BROCK:** Because I know Mr. Wyner made a comment

1 about putting it in his statement regarding taping the  
2 hearing but we had an ALJ who wouldn't allow it and then lost  
3 a third of the transcript of the recording. So I would like  
4 to propose that we make it a rule that ALJs will allow every  
5 party to tape.

6 **MS. MCARTHUR:** Second.

7 **MS. SAVAGE:** We have a second on that. Any comment  
8 down in Southern California on that particular point?

9 **MR. READ:** Yes, we have a comment from -- let's see  
10 if I can get this around. Tania Whiteleather.

11 **MS. WHITELEATHER:** I'll just speak loudly. Hi. I  
12 just wanted to add that I think there are a number of  
13 concerns and problems of transcripts because we had gotten  
14 many that are missing whole days, missing portions of witness  
15 testimony, things that have not recorded.

16 And I know that we have had some ALJs that will  
17 allow recording by a party and others that won't and I just  
18 strongly believe that this is something that is so very  
19 simple that would not impact anybody that would allow us to  
20 have a backup when these reoccurring problems with  
21 (inaudible) transcripts occur.

22 **MS. SAVAGE:** Any other?

23 **MR. READ:** Steve Wyner? I think Maureen Graves is  
24 on my side. Did you have your hand raised?

25 **MS. GRAVES:** Yes.

26 **MR. READ:** Okay, let's hold on a second. Are you

1 there?

2           **MS. GRAVES:** Yes, I agree with Tania that this is a  
3 simple thing. It's also something of an investment for  
4 families to make sure that their own equipment is working.  
5 It would be nice to be able to know that they're going to be  
6 able to use it.

7           The other point I would make is we talked about  
8 having tapes or CDs available right after hearing for help  
9 with preparing accurate closing arguments for years, I  
10 believe. I don't think this is that difficult. I think it  
11 would be quite simple for OAH to figure out how much this is  
12 going to cost --

13           **ADMINISTRATIVE LAW JUDGE CLARK:** Could you speak up  
14 a little bit, Ms. Graves?

15           **MS. GRAVES:** I think it would be very simple for  
16 OAH to figure out how much it's going to cost to provide CDs  
17 of testimony at the end -- close of testimony in order to  
18 prepare accurate briefs.

19           I think that information could easily be  
20 disseminated on the website or to parties who ask for it. I  
21 don't think that should wait for more recommendations from  
22 the next Advisory Committee meeting.

23           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, I just want  
24 to comment. Richard Clark. I just want to comment on that  
25 for Ms. Graves. She's correct. The question that I'm really  
26 asking was fairly specific.

1           And if you have additional guidance that you want  
2 to provide, additional recommendations that you want to make,  
3 that's perfectly fine but the last Advisory Committee, my  
4 understanding was you had resolved or that they had  
5 recommended that the electronic recording be available at the  
6 end of the case, which from my perspective is when the  
7 decision's issued and that has caused concern and issues with  
8 some of the attorneys in this field.

9           So my question really is, do you want it at the end  
10 of the testimony or did you want it at the end of the case?  
11 And I'm just asking for clarification of that.

12           The rest of it is open to discussion as well but if  
13 you can take (inaudible) on that question, that would be  
14 helpful.

15           **MS. SAVAGE:** Yes, I think we -- it sounds to me,  
16 and if there's anyone with disagreement, that people are  
17 wanting it at the close of testimony as opposed to when the  
18 brief is written. Is there any disagreement with getting a  
19 recording at the close of testimony?

20           **MR. READ:** I'm seeing a lot of head nods down here  
21 so are we -- anyone disagree with that? Yes, I think we're  
22 unanimous down here that the purpose is for essentially for  
23 helping out with the closing briefs and we'd like it as soon  
24 as possible at the end of the testimony.

25           **MS. SAVAGE:** Robert, is there any disagreement up  
26 here with getting it at the close of testimony?

1           **MS. MCARTHUR:** Just a question --

2           **MS. SAVAGE:** Steve?

3           **MR. ROSENBAUM:** Steve. Just a friendly amendment  
4 to the close of testimony and then to be decided in the  
5 future what impact that would have on the briefing schedule,  
6 not to make that decision today.

7           **MS. BROCK:** And I would like it at the end of  
8 verbal testimony because sometimes the judge allows an  
9 observation or something to happen that will be a declaration  
10 that is going to be done a week or two later. So I think  
11 that as soon as all the verbal testimony has been taken, we  
12 should be allowed to get a copy of the verbal recording.

13           **MS. SAVAGE:** So it would be the close of live  
14 testimony as opposed to any other type of evidence.

15           Is that acceptable down in Southern California? It  
16 would be clarified to the close of live testimony.

17           **MR. READ:** Yes.

18           **MR. WYNER:** Yes.

19           **MS. SAVAGE:** Okay. And then the question about  
20 whether it affects the timing of the briefing and that issue  
21 is deferred. Eliza?

22           **MS. MCARTHUR:** Did we all -- I was reading so I  
23 wasn't paying attention the entire time. Did we all resolve  
24 the issue of transcript versus electronic record?

25           **MR. ROSENBAUM:** No, this is not a transcript.

1           **MS. SAVAGE:** Well, we --

2           **MS. MCARTHUR:** But I wanted to correct one thing.  
3 I was incorrect. The transcript is not what appears in the  
4 regs. I couldn't find the -- this is a great book, by the  
5 way, Judge Varma. I'm writing down --

6           **MS. SAVAGE:** Come on, Eliza, let's get going.

7           **MS. MCARTHUR:** It says -- there are three relevant  
8 provisions but I think the one that we're speaking of in  
9 particular says have the record hearing rights, the parent  
10 has the right to have the record of the hearing and the  
11 findings of fact and decisions provided at no cost to the  
12 parents. So the term is 'record' not transcript.

13           But I think when we go back to Steve Wyner's point,  
14 that there is as a matter of law a distinction between record  
15 and a certified transcript for purposes of appeal. But  
16 because the word wasn't there as I had thought, I wanted to  
17 let you know.

18           **MS. SAVAGE:** So the second -- I'm going to cut you  
19 off, Tammi. So the second thing is, do we want to recommend  
20 that all judges permit both parties to record?

21           **MULTIPLE VOICES:** Yes. Second.

22           **MS. SAVAGE:** Okay, so have two -- and I'm going to  
23 cut you off, Tammi, because we've got to keep going.

24           **MS. BROCK:** That's fine.

25           **MS. SAVAGE:** Is there any further discussion on  
26 this topic, Jonathan, down there?

1           **MR. READ:** No.

2           **MS. SAVAGE:** Okay. The next issue is the request  
3 for more days in due process requests.

4           **ADMINISTRATIVE LAW JUDGE CLARK:** This is also  
5 something that was discussed at the prior Advisory Committee  
6 meeting but we never received a recommendation.

7           **MS. SAVAGE:** Okay.

8           **ADMINISTRATIVE LAW JUDGE CLARK:** So we have  
9 received a number of due process hearing requests from the  
10 various parties. Sometimes you request ten days for the  
11 hearing just for your side of the case, some people request  
12 fifteen days and there was sort of a consensus if I recall  
13 from the last Advisory Committee meeting that anything more  
14 than five days we should just open with our initial date and  
15 then have them make that request so the opposing side can be  
16 consulted about that as well.

17           I'm just looking for guidance from the Advisory  
18 Committee about how we should treat requests when a party is  
19 asking for, you know, many more hearing days than we -- OAH  
20 typically sets one day for an initial hearing and one day for  
21 a prehearing conference and a day for the mediation. That's  
22 what we typically do and then most parties get together and  
23 request additional days and requests dates at their calendar.

24           But on occasion we have parties who submit these  
25 requests saying, my case alone will take ten days and they  
26 want us to set a 15-day hearing at the outset which causes

1 problems for people's calendars and it's just something out  
2 of the ordinary for us. I'm looking for guidance on how and  
3 how many days or whether we should be doing that or not.

4 **MS. SAVAGE:** Jonathan, do you guys want to start  
5 down there?

6 **MR. READ:** Sure. Do we have any comments on that?  
7 Steve has a comment.

8 **MR. WYNER:** I don't think I've had a hearing that  
9 was less than ten days. So I don't -- I haven't had any  
10 problem scheduling enough days for hearing. But I think the  
11 procedure is generally that, you know, if I know -- once I  
12 get the notice I generally let the other side know that we're  
13 going to need more days and try to dialogue about what we're  
14 going to need and then, you know, contact OAH and say, you  
15 know, we're either agreed or we're not agreed and we have  
16 more than just five days that we're going to need. And if  
17 there's a disagreement I would recommend that you request a  
18 trial setting conference.

19 **MR. READ:** I guess I would follow that up with a  
20 request for clarification because I do recall we discussed  
21 trial setting conferences in the last meeting. I think  
22 they're very helpful.

23 I'm not sure what OAH's policy is with respect to  
24 that initial hearing date because I've heard some say that  
25 that's simply the first day of hearing and that the hearing  
26 will proceed on consecutive days after that and I've heard

1 others say that that's a one-day hearing and if the parties  
2 are going to request more, then they need to submit a request  
3 for more days of hearing which may cause the hearing to be  
4 rescheduled. And so I guess I'm not quite sure what the  
5 policy or practice is right now.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, that's the  
7 second -- that's agenda item 3-D which is request for report  
8 on the initial hearing date. Again that's something that we  
9 seek guidance because I do think there are some contradictory  
10 information out there about whether you can proceed on the  
11 initial date or whether you would have to -- and we just go  
12 day to day until the case is done or whether or not you  
13 should be requesting a set date with five or six days,  
14 however long your hearing is.

15 And again, that's something that I think you should  
16 discuss and make a recommendation for how you want that to  
17 proceed. So if you see those as the same question --

18 **MS. SAVAGE:** Yes.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** -- that's fine.  
20 If you see them as two distinct questions, that's okay as  
21 well.

22 **MS. SAVAGE:** What's the current policy? So the  
23 party -- if a party says I want to go forward on that  
24 starting on that first day, what -- how does OAH -- do they  
25 have a policy on how they proceed?

26 **ADMINISTRATIVE LAW JUDGE CLARK:** I do think

1 different judges handle that differently. And some judges  
2 prefer to go day to day. That would be how I would do it if  
3 that were a case that would come before me. I would just say  
4 if we're starting today and you want to fight the hearing,  
5 we're going to go until it's finished. But other judges say,  
6 that will be your first day and then we'll pick dates,  
7 whatever dates you need to finish it after that. So that's  
8 something I think that we need to clarify for OAH perspective  
9 and hearing from you would be helpful.

10 **MR. READ:** I guess we can open this up. My only  
11 request would be that we have consistency because  
12 coordinating calendars can be a nightmare and if we can't  
13 predict how the hearing is going to be treated or whether  
14 we'll need to file a motion to continue I think is essential.

15 **MR. WYNER:** This is Steven again. I'm not sure I  
16 heard the last part of the policy. Were you saying, Judge  
17 Clark, that some judges say, okay, show up on that first day  
18 and at that first day some judges will say, okay, now you're  
19 here until we're done? And other judges will say, okay, well  
20 now we're going to calendar the rest of the hearing. Is that  
21 what's going on?

22 **ADMINISTRATIVE LAW JUDGE CLARK:** I didn't -- that's  
23 correct. I didn't say there's a policy.

24 **MR. WYNER:** No.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** There isn't one.  
26 But certain judges handle it different ways and that's why

1 the consistency would be important. If there's something  
2 that we need to develop a structure for, we should. But  
3 that's -- there is a difference in how some judges handle the  
4 hearing dates.

5 **MR. WYNER:** Well, on the issue, you know, for the  
6 judges to say, you know, come and show up on this first day  
7 and then, you know, then we'll re-calendar the rest of the  
8 hearing, that for attorneys I think is kind of a nightmare.  
9 And it's very expensive because that means you've got to  
10 prepare. And why would you partially prepare? You're going  
11 to fully prepare.

12 And then someone says well, okay, we can reconvene  
13 in three weeks and it's like, as I get older, most of my  
14 memory starts to fade away so, you know, all the preparation  
15 that I did the first day of hearing I have to re-do for, you  
16 know, three weeks later. So that to me is a very bad idea.  
17 And if a judge wants to do that, those judges I think should  
18 hold trial-setting conferences and get squares to, you know,  
19 how many days of hearing it's going to be and when it's going  
20 to go.

21 I don't think you want people having to prepare  
22 multiple times to go to hearing. This is for parents a very  
23 emotional, heart-wrenching experience and they don't need to  
24 stop and go. That's not a good idea I don't think. I don't  
25 know any court that would handle a proceeding that way.

26 So I think, you know, at the very latest, by the

1 time the prehearing conference order is issued, we ought to  
2 know how many days we're going and what those dates are and  
3 when we're exchanging exhibits and witness lists.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** And I think that  
5 is typically something that you talk about at a prehearing  
6 conference but this doesn't happen a lot. It does happen on  
7 occasion and keep in mind, OAH wants the parties to agree.  
8 We want you to select your days, we want you to go on dates  
9 that you want to go forward.

10 But there are some parties who don't want to move  
11 that initial hearing date. And that creates a problem for  
12 everybody. It creates a problem for the attorneys, it  
13 creates a problem for the parents, it makes it a scheduling  
14 hassle for OAH at times. So that's why we need your input on  
15 that particular point.

16 Again, our goal is to have the parties meeting and  
17 conferring early and agreeing upon your dates, submitting the  
18 continuance requests to us in writing so that we can schedule  
19 whatever dates you want when you want, but there are the  
20 times when the initial hearing date comes forward and we just  
21 need to find a way -- a consistent way to handle that when  
22 the parties are requesting to move forward on that date.

23 **MS. SAVAGE:** I guess I would piggyback on  
24 Jonathan's comment that I think this is what a trial setting  
25 conference could address for those very few limited  
26 situations where the parties can't agree. One party wants to

1 go forward but it's going to be incumbent on that party to  
2 kind of initiate getting that trial setting conference or  
3 letting the parties know that I want to go forward on that  
4 day.

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, it's letting  
6 OAH know as well.

7 **MS. SAVAGE:** Right.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** I mean that's the  
9 thing because the time clock is running the entire time until  
10 the matter is continued, the clock is running. So we need to  
11 know as soon as possible when the case --

12 Go ahead. So we have a comment in Southern  
13 California?

14 **MR. READ:** Yes, we have --

15 **ADMINISTRATIVE LAW JUDGE MACMURRAY:** Ann MacMurray,  
16 presiding judge in Van Nuys. Southern California has a  
17 little bit of a different take on this because we have so  
18 many more cases than the rest of the State. And typically  
19 the way it usually works is we have the one-day setting, the  
20 parties usually meet and confer and give us dates that will  
21 work from that, including the number of actual days of  
22 hearing they think they're going to be in.

23 And we would typically at that first -- changing  
24 that first date of hearing we typically grant a continuance  
25 to give you the dates that seem to work for both parties and  
26 that's generally how it's been working. But there are some

1 cases where one party wants to go forward on the first date  
2 and the calendaring needs are such that that judge is  
3 calendared for that one day and they don't have the luxury of  
4 them saying, well, I'm just going to go on Wednesday,  
5 Thursday, Friday with you as well because they'll be in  
6 mediations or they'll be doing something else.

7           So you might get that one day of hearings but the  
8 reality of going on on continuous dates -- it's not a reality  
9 really.

10           You can discuss the dates at that one-day hearing  
11 and that gives them a couple weeks out or preferred practice  
12 is meet and confer and pick your dates and we're happy to  
13 calendar the five, ten or fifteen days someday down the line  
14 that works for both parties. But we can't jam up the  
15 calendar and take a judge offline like that as fast as you  
16 would think we would like to be able to.

17           **MS. SAVAGE:** There's a comment from the web and  
18 it's parents should be given priority on this issue, on the  
19 issue of calendaring and what days your hearing is.

20           **MR. CORBIN:** I wanted to touch on -- this is Carl  
21 Corbin -- touch on this issue because I think it would be  
22 helpful maybe from Northern California because it sounds like  
23 Southern California may be doing something different, but an  
24 understanding that that initial day we are going to move  
25 forward and do however many days of hearing, and the parties  
26 if they are going to need more than one day, which in most

1 cases are going to need more than one day, then it would be  
2 incumbent as soon as possible for the parties to meet and  
3 confer and to share their information with OAH upon, oh,  
4 we're going to need five or six days starting on that date,  
5 so if we want a continuance, what those days are.

6 And if for some reason we're not able to agree then  
7 I think we need to get a trial setting conference as soon as  
8 possible in order to resolve this issue. But I think we  
9 should treat that first day as the first day of hearing for a  
10 five, six, ten day hearing.

11 **ADMINISTRATIVE LAW JUDGE MACMURRAY:** Well, we used  
12 to schedule things for five days in a row but the reality was  
13 those initial dates never held because there was what OAH  
14 unilaterally set and it never worked for one or the other  
15 sides.

16 So instead of jamming up the calendar with five  
17 days of hearings when really we're going to go hardly ever,  
18 we went back to the one day of hearing and hoped that the  
19 parties will converse with each other and come up with days  
20 that worked for them.

21 Because the reality is most cases don't go on that  
22 date.

23 **MR. READ:** We have a comment from the other side of  
24 the room so you may want to get there. Janeen?

25 **MS. STEEL:** You know, for those cases that you want  
26 to have a hearing and a decision in 45 days, the parent

1 should have an ability, and I'm not hearing in Southern  
2 California that that is available. Because not every parent  
3 is going to be one day.

4 So can't we -- you know, if I'm saying I want, and  
5 not every case but there are cases that you want your hearing  
6 and a decision in 45 days. And I'm not hearing that that is  
7 even available unless it's a one-day hearing.

8 **ADMINISTRATIVE LAW JUDGE MACMURRAY:** Well, if  
9 you -- when you get your scheduling order, you get with the  
10 other side and say look, this is a five-day hearing. Notify  
11 us as soon as you can some number of weeks in advance, we can  
12 then calendar as long as this hearing is really going to go.

13 But to just calendar a five-day hearing when most  
14 times it's not the way it goes is eating up our resources but  
15 if you ask the --

16 **MS. STEEL:** The five days.

17 **ADMINISTRATIVE LAW JUDGE MACMURRAY:** -- or talk to  
18 the other side that these are the days that we really think  
19 it's going to go --

20 **MS. STEEL:** I mean it's not always that the other  
21 side wants to go back to -- that's not -- if you want to have  
22 a hearing the decision is you don't have the agreement and  
23 you set the other days, who is going to help in that  
24 situation? Is that just not -- if you don't have agreement  
25 with the other side is that just not an option for that?

26 **ADMINISTRATIVE LAW JUDGE MACMURRAY:** Well, I think

1 it --

2 **ADMINISTRATIVE LAW JUDGE CLARK:** I want to take us  
3 back to our agenda topic here. There's two different  
4 questions that are out there right now. And I do think if  
5 the Advisory Committee can make recommendations that would be  
6 helpful. If you can't, then you can't.

7 But the first one is, how do we handle requests for  
8 more than one day of the initial hearing request? Do the  
9 parties want us to set 15 days as requested by the opposing  
10 side before you know or do you just want us to set the  
11 initial date and say you need to contact the other side and  
12 agree on dates or how do you want us to handle that?

13 And the second question is, when there is a request  
14 to move forward on the initial date set, what's the best  
15 procedure that we can use to help you go forward on that date  
16 or how do you want to see that handled?

17 So those are the two questions that I think we need  
18 to focus on and if you're ready to make a recommendation or  
19 if you need more discussion, that's fine. But I want to just  
20 make sure that we're -- there's no set policy about going  
21 forward on a first date or not. Like I said, judges handle  
22 it differently. It's discretionary. But if there needs to  
23 be consistency that's what you're here to help us make that  
24 consistency throughout OAH.

25 **MS. BROCK:** Tammi Brock. I truly believe that  
26 prior to a hearing, during a prehearing conference, that an

1 estimate of how many days is set at the very beginning  
2 because I've seen cases delayed several weeks that get into  
3 it and just like Mr. Wyner said, three weeks later you have  
4 to come back to it.

5 I've also seen ALJs who run the courtroom very  
6 sharply, that they get things moving along, they don't have  
7 them read all the evidence and so it comes out less. I've  
8 seen court cases where they want everything read out loud.  
9 It drags on and they need three or four more days. So when  
10 we get into a case you may find they need less or more days  
11 but I really believe that if you establish up front what --  
12 that we need to establish up front an estimate of how many  
13 days so that everyone's on board.

14 But in that same sense I also think that the  
15 district needs to have a list of the witnesses and their  
16 availability prior to that prehearing conference so you  
17 aren't getting into the first day of hearing and need  
18 additional days because they're unavailable and you have to --

19 **MS. SAVAGE:** Right. But I think what we're trying  
20 to figure out or get some type of resolution on is when a  
21 party submits a hearing request and says I need ten days of  
22 hearing, what should -- how should OAH respond? Should they  
23 set the ten days?

24 I would recommend that in those very limited cases  
25 OAH set a trial setting conference within the first week,  
26 within seven, five business days so that the parties are on

1 the phone immediately so if it does need to get set for those  
2 ten days everyone knows right away.

3 **MS. BROCK:** But prior to hearing.

4 **MS. SAVAGE:** You file the hearing request on August  
5 1<sup>st</sup>, within five business days if there's that request in the  
6 very narrow -- we want ten days of hearing or five days of  
7 hearing or fifteen or whatever, that OAH's policy is then to  
8 automatically set a trial setting conference.

9 **MR. READ:** We had a comment down here from Dan  
10 Harbottle.

11 **MR. HARBOTTLE:** Yes, this is Dan Harbottle  
12 speaking. I think the need for consistency is really  
13 critical. However, hearing the different dynamics that  
14 appear to be at play in the different offices it may be  
15 possible to have different rules and policies for different  
16 offices. I don't know if that's feasible but it sounds like  
17 Northern California has few enough hearings that one could  
18 set multiple days right out of the box.

19 Down here, our calendars are so full generally  
20 speaking that permitting one side or the other, parent or  
21 district, to simply determine the number of days at the  
22 initial filing date I think is problematic. Either one of us  
23 or the other could just be hypothesizing as to how many  
24 witnesses the other may want.

25 I think any consistent policy is better than judge  
26 by judge discretion. So as long as we know what the rule is

1 then we organize our calendars accordingly. If we expect  
2 that the first day will be the first day of three or five as  
3 a normal course, then we can arrange our schedules that way.  
4 If we know that it's likely to be a single day followed by  
5 setting of additional days, we'll at least know that. My  
6 frustration has been just not knowing judge to judge what  
7 we're going to end up with in terms of post-filing, post  
8 initialing scheduling order.

9 So my recommendation would be that we one way or  
10 the other come up with an OAH-wide set of policies on that  
11 point or at least regional, region by region, depending on  
12 the dynamics and the number of filings per region.

13 **MR. WYNER:** This is Steven. I'd like to make a  
14 suggestion. A lot of times the people don't think about how  
15 many days is this going to take to try if we actually go to  
16 hearing when they make their hearing request. And I think  
17 one way to move this along would be the moving party should  
18 indicate how many days of hearing they think they're going to  
19 need in order to go through due process.

20 Now there's a provision in the Federal statute, I  
21 think it's in the State's statute and I think I may have a  
22 different interpretation of this than OAH does, but there's a  
23 provision that requires a response from the opposing party to  
24 the due process complaint. And in that response I think it  
25 should be required that the opposing side or the respondent  
26 indicate whether they're willing to agree with those number

1 of days of hearing or they disagree with that.

2           And if they -- in any event the parties should be  
3 ordered to -- just let it be a rule, that if you can't -- you  
4 know, you need to decide how many days of hearing by the time  
5 that response is due, whether it's ten or -- I forget when  
6 the response is due, whether it's ten days after the hearing  
7 has been noticed or not.

8           And then order counsel or the parties to meet and  
9 confer and see if they can't stipulate to the number of days  
10 of hearing. And in those instances where they can't, you  
11 know, have a joint statement from both sides saying why they  
12 can't agree and therefore establishing good cause for a trial  
13 setting conference.

14           I know OAH is adverse to the trial setting  
15 conference notion but once parties disagree then there's no  
16 other way to do it. And I think waiting to see how many days  
17 of hearing you're going to have until you have a prehearing  
18 conference is not a particularly good idea.

19           First of all, I don't think you get a prehearing  
20 conference unless you've actually asked for more than one day  
21 of hearing. And I think it's like not fair that, you know,  
22 people would want to go on that -- you know, we're going to  
23 go on that first day. I don't know anybody that could hold a  
24 hearing in one day. I don't know anybody who can present a  
25 hearing in one day. It's just not realistic.

26           Those dates that are being sent out in actuality

1 are phantom dates and people ought to understand that and it  
2 ought to be part of the process of requesting a hearing that  
3 you come up and you actually know what your case is about and  
4 how many days it's going to take you to put on the case to  
5 prove the allegations that are in your due process request.

6 **ADMINISTRATIVE LAW JUDGE CLARK:** All right, we have  
7 a comment from our audience here.

8 **MR. READ:** WE can't see each other down here,  
9 Richard. Can you take down the agenda so that people can see  
10 themselves talking?

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Oh, okay.

12 **MR. ROSENBAUM:** Oh, that's an idea.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** We have a little  
14 box that pops up so it's a little --

15 **MR. READ:** We have a comment from a gentlemen in  
16 the aisles.

17 **MR. ATWOOD:** My name is --

18 **ADMINISTRATIVE LAW JUDGE CLARK:** Can you see  
19 yourselves now?

20 **MR. WYNER:** No.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** There you go.  
22 There you are.

23 **MR. READ:** Oh, you look wonderful.

24 **MR. ATWOOD:** My name is Peter Atwood and what I was  
25 thinking here when I hear Steve's suggestion, one thing

1 you've got to look at is it is a great suggestion except for  
2 one thing. A parent who's never been this way before, they  
3 really have no clue how long they're going to need for  
4 hearing. You know what I mean? They've never been this way  
5 before.

6 So that puts them at a big disadvantage. And so if  
7 we're supposed to say, you know, when file for the hearing,  
8 how many days I'm going to say well, I don't know. So what  
9 do we do with that?

10 **MR. WYNER:** I'll respond to that. If you're a  
11 parent and you're going to a hearing without counsel or  
12 somebody to represent you, you're in a big disadvantage.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, let's go  
14 back to what our questions are.

15 The first one is, the first question is, does the  
16 Committee have a recommendation when a party is requesting  
17 more days in the initial hearing request than simply asking  
18 us to set the initial date. Does the Committee have a vote  
19 or recommendation on that particular topic at this time?

20 Is there a consensus or some type of a  
21 recommendation you'd like to make at this point? Jonathan,  
22 anybody in Southern California?

23 **MR. READ:** Tania and Maureen, I heard Tania first,  
24 so.

25 **MS. WHITELEATHER:** I just wanted to add I know that  
26 the form that comes out, of course is never enough for a full

1 complaint. But maybe something could be added to the form  
2 when a parent files to indicate, at least to give them some  
3 guidance, number of days that you anticipate so at least they  
4 can put the information down.

5 Because granted, parents are at a disadvantage in  
6 this supposedly non-adversarial system. But that would at  
7 least give them information that they should provide the  
8 number of days and help them in filing them.

9 **MR. READ:** Maureen?

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you.  
11 Was Ms. Grant, I see your hand up, too.

12 **MS. GRANT:** Yes. My -- I was agreeing I believe  
13 with Roberta. I think it would be a good idea whenever  
14 there's anything unusual about scheduling like people saying  
15 I really do need a long hearing (inaudible) 45 days, to  
16 immediately set a TSC. I think that makes a lot of sense.

17 I think if there were a rule that you would give us  
18 whatever we ask for, we'll probably start asking for more  
19 instead of using what I think is a system that's working  
20 much -- pretty well at this point where we get a day.

21 I would assume those were phantom days. I never  
22 thought that I might have to go forward for an undisclosed  
23 amount following that and I've never been in a position where  
24 that seems imminent.

25 I think when that was the rule years ago, that  
26 really was havoc for small practices and solo practitioners

1 and parents often couldn't find lawyers because they would  
2 come in with long hearing dates that seemed quite fixed.

3 So I think the current system is mostly working  
4 well. I think occasionally people need to do something  
5 special, and I hope OAH can accommodate trial setting  
6 conferences in the cases where people say this is a special  
7 case.

8 **MR. READ:** I'm turning this the wrong way. I'm  
9 never going to get this direction down so you'll just have to  
10 bear with me.

11 **ADMINISTRATIVE LAW JUDGE CLARK:** I think we need to  
12 move on, make a recommendation, if you can't that's fine but  
13 we need to move on with the agenda at some point, so --

14 **MR. READ:** And I guess my recommendation at this  
15 point would be that consistently OAH, the judges don't assume  
16 that that first day of hearing if it's going to be more than  
17 one day, that it's going to proceed on consecutive days after  
18 that.

19 Because I think that's -- it's the predictability  
20 here from my experience is the problem. And it there's going  
21 to be anything different about it, whether it's more days of  
22 hearing or what not, that there's going to be some notice  
23 that that's going to require something more, either a request  
24 for more days of hearing -- I think the mutual continuance  
25 works great right now. But just so that the parties know  
26 what's expected of them so, you know, to address Steven's

1 concern that we're not prepping for a full hearing when it's  
2 not realistically going to happen. Connie?

3 **MS. TAYLOR:** This is Constance Taylor. I would  
4 recommend to make it as simple as possible that if a party  
5 filing for hearing wants to move forward immediately and for  
6 more than one day that that party make a request for a trial  
7 setting conference.

8 Rather than anticipating a number of days and  
9 requesting that many days, simply request a trial setting  
10 conference in the request for due process hearing. That way  
11 OAH doesn't have to pick up on the request for additional  
12 days and set the trial setting conference and nobody has to  
13 anticipate a number of days and make assumptions for the  
14 other side.

15 So if you anticipate moving forward initially, and  
16 for more than one day, make a request in your due process  
17 request for a trial setting conference and that puts the  
18 other party on notice that it needs to start thinking about  
19 how many days it will request for a hearing as well.

20 **MR. WYNER:** Second.

21 **MS. SAVAGE:** I think the problem I have with the  
22 rule at the party doing it is only that not all parties are  
23 going to know that rule. And if we're asking OAH to act in a  
24 certain way that's consistent as possible, the OAH judge or  
25 whoever processes the request sees five days or ten days and  
26 says, okay, that's set as a trial setting conference.

1           But, you know, can they have attorneys who this is  
2 their first hearing date who don't know the rule and don't  
3 know to make that request for a trial setting conference so I  
4 would have difficulty with your proposal for that reason.

5           **MR. CORBIN:** This is Carl Corbin. I like  
6 Constance's proposal and I think all that's resolved to  
7 address Roberta's concern is we make it clear both in the  
8 manual and on the actual form that you need to include this  
9 information. Then parents and attorneys and everybody's on  
10 notice and we resolve this issue.

11           **MS. KUPERSCHMIT:** This is Ines Kuperschmit from  
12 Learning Rights Center. I actually agree and I think that we  
13 could work to make sure that the forms that are on the OAH  
14 website and the manuals that are being put out reflect that  
15 rule.

16           Because it's a reasonable proposal and actually in  
17 our experience I prefer to have the opportunity to talk to  
18 opposing counsel with an ALJ on the phone early rather than  
19 waiting because we also -- we don't care for the mystery of  
20 the first day and we many times prepare our entire case for  
21 the first day because we usually as an office, and we have  
22 parents who are frequently in crisis and they want to go to  
23 hearing right away. So I never assume that it's just one day  
24 and then that's it. We come prepared for the first day of  
25 hearing ready to go to trial.

26           **MR. READ:** We already had a second to that proposal

1 down there so --

2 **ADMINISTRATIVE LAW JUDGE CLARK:** So why don't you  
3 let him vote, Mr. Read, down there and then we'll have  
4 everybody up here take a consensus vote. Why don't you --  
5 what are people voting on? What recommendation and then let  
6 us know what your count is down there and then we'll do the  
7 same thing up here.

8 **MS. KUPERSCHMIT:** Would you like me to read it from  
9 my notes?

10 **MR. READ:** Please.

11 **MS. KUPERSCHMIT:** The recommendation that Constance  
12 made is that if a party wants to move forward with hearing  
13 immediately and that hearing will last for more than one day,  
14 that request should actually be put into the due process  
15 complaint and a TSC should be scheduled immediately, as soon  
16 as OAH receives that.

17 **MS. WILLMORE:** TSC should be held right away?

18 **MS. KUPERSCHMIT:** TSC should be held right away.

19 **MS. TAYLOR:** And that will be made clear in the --  
20 I'm sorry, this is Melissa.

21 **MS. KUPERSCHMIT:** In the due process complaint.

22 **MS. SAVAGE:** So I want to make sure -- I thought  
23 that Constance had said that the party would have to request  
24 the TSC versus OAH just acting on that. Because I agree with  
25 OAH if it's acting.

26 **MS. KUPERSCHMIT:** I guess we can just clarify

1 whether they were just specifically to say those words that  
2 they're requesting a TSC or they can simply say, I am  
3 requesting to move right away and I need more than one day.  
4 Would that be sufficient to trigger it?

5 **UNKNOWN FEMALE:** My suggestion is to say, we are  
6 requesting a trial setting conference. So OAH doesn't have  
7 to read between the lines.

8 **MS. SAVAGE:** And that was where my disagreement  
9 was. And I was -- I think I'm more consistent with what Ines  
10 is saying is that it's just -- if you make those -- if you  
11 say I want to go forward on the first day or I need five  
12 days, that would be kind of the trigger language for OAH to  
13 set a TSC if the party doesn't also request it.

14 **MR. WYNER:** I have a question for Judge Clark.  
15 This is Steven. Isn't this going to put us back square in  
16 the issue of does OAH want to have trial setting conferences?  
17 Because everybody's going to say they need more than one day.

18 **ADMINISTRATIVE LAW JUDGE CLARK:** I would agree. I  
19 don't -- we don't encourage the parties to request trial  
20 setting conferences. In the rare case that you can't agree  
21 we have set them. But we are not looking to go back to a  
22 trial setting conference system.

23 But for this -- sort of this hybrid case where  
24 people really do want to move forward, if that's your  
25 recommendation it's something that we will consider. But I  
26 am concerned that it would just become sort of the default

1 for everybody's plea which is, we want a trial setting  
2 conference, we need a trial setting conference and we've  
3 moved away from that.

4 It should be -- the onus should be on the parties  
5 to get together and select your dates and let us know when  
6 you're going. We've made that available. That's been the  
7 recommendation for years from the Advisory Committee and  
8 we've instituted that.

9 This really becomes more problematic when you have  
10 the unrepresented parent and a school district. That's  
11 really where you're talking about these types of cases.  
12 That's where we see it more.

13 Attorney to attorney, most of the time the  
14 attorneys get together, meet and confer, and do follow the  
15 process that's been implemented. But there are times when an  
16 unrepresented person doesn't understand that or wants to move  
17 forward on the first date and we're trying to figure out the  
18 best system to have that in place. And that's really where  
19 we are with those requests.

20 They don't happen often but they do happen  
21 occasionally and it shouldn't be really coming from an  
22 attorney, you know, because attorneys tend to talk to each  
23 other more.

24 **UNKNOWN FEMALE:** The right question is why can't we  
25 TSC everything in due process, can you answer that?

26 **MR. WYNER:** Procedurally, can somebody else make a

1 different recommendation then or do we have to vote on the  
2 one that's out there?

3 **MR. ROSENBAUM:** No, if Constance withdraws it we  
4 can vote on another. Constance, if you withdraw, we can go  
5 for another motion.

6 **MS. TAYLOR:** I'm happy to withdraw it if there's  
7 something more viable but what we were talking about is the  
8 case where we want to go forward immediately and we want to  
9 go forward for more than one day.

10 And in those circumstances, I mean I have a case  
11 right now where the parent has received four continuances.  
12 And so we need help in situations like that and I believe  
13 Janeen has a similar circumstance where parents want to go  
14 forward and get their 45-day decision. And there are cases  
15 where we need help going forward immediately for more than  
16 one day. And I thought this procedure would address that  
17 circumstance.

18 **MR. WYNER:** So I'd like to make a recommendation  
19 that the due process complaint form that's posted on the  
20 website and the manual require that people indicate whether  
21 the hearing is going to take more than one day.

22 And that the response that's filed by the opposing  
23 side, of course this would be, OAH would actually have to  
24 enforce the statute that requires a response to be made  
25 within ten or fifteen days of the filing of the complaint --  
26 that the respondents say whether they're agreeable to an

1 extended, you know, hearing of more than one day.

2 In which case the rules ought to provide -- maybe  
3 you have to have a special rule -- that the parties have to  
4 meet and confer. So that means if a parent is unrepresented  
5 they have to meet and confer either with the district or with  
6 the district's attorney. And if they can agree on the number  
7 of days, it seems to me they ought to be able to file a  
8 stipulation, you know, we want a hearing X number of days and  
9 these are the available dates that we have over the next  
10 three, four, five weeks, whatever. And then that's simple  
11 enough to set.

12 And in those instances after meet and confer, where  
13 the parties can't agree on the number of dates or when, then  
14 that should constitute good cause for a trial setting  
15 conference and someone will have to set that forth in a  
16 declaration. That's my proposal.

17 **ADMINISTRATIVE LAW JUDGE CLARK:** I don't know, did  
18 anybody get that one? That's a long one.

19 **MR. WYNER:** I'll do it again.

20 **MS. SAVAGE:** What I'm wondering is that we're not  
21 going to have a recommendation or a consensus on this. So --

22 **MR. WYNER:** I just made a motion. I just made a  
23 motion.

24 **MS. SAVAGE:** Okay. Eliza?

25 **MS. MCARTHUR:** Could I interject a different  
26 motion, Steven, particularly because I disagree with your

1 partial reading of the onset provision of 1415.

2 I think Constance's point is well taken. It  
3 appears to eliminate the issue that OAH may be concerned  
4 about which is going back to everybody and their mother  
5 asking for a TSC. But only having the TSC in those hybrid,  
6 unusual circumstances, i.e., we want to go on the first day  
7 and it's going to be more than one day of course.

8 In terms of your concern, Roberta, of people not  
9 knowing the language or asking the right thing, well, hell,  
10 let's explain it. The manual has a lot of things that it  
11 already explains, can't we just explain what Constance is  
12 proposing?

13 I mean if you don't read it that's too bad. But,  
14 you know, just because the new attorney doesn't read it, is  
15 not something I think we should be so concerned about. Let's  
16 explain. The proposal is good. Let's not shove it off just  
17 because we're worried about the non-readers.

18 **MR. WYNER:** I don't understand how, what Constance  
19 proposed and withdrew. It's going to avoid a situation of  
20 everybody asking for a trial setting conference.

21 **MR. ROSENBAUM:** Yes, it wasn't just about --

22 **MS. BROCK:** I'd like to know why hearings are only  
23 set up for one day. I mean I've never heard of a one-day  
24 hearing or being able to get anything done in one day.  
25 Right?

26 **MS. SAVAGE:** I'm not sure we have time for that

1 discussion.

2 (Overlapping voices)

3 **MS. BROCK:** I know but why are we setting up one  
4 day hearings in the first place?

5 **MS. KUPERSCHMIT:** I guess I have -- Ines, from  
6 Learning Rights, I have a question that may actually answer.  
7 I'm curious in the case that you're referring to whether it's  
8 an unrepresented parent.

9 **MS. TAYLOR:** Every other month the parent is  
10 unrepresented.

11 **MS. KUPERSCHMIT:** Okay.

12 **MS. TAYLOR:** By the way, I haven't withdrawn my  
13 proposal.

14 **MS. KUPERSCHMIT:** Because I guess I'm just curious,  
15 if all the situations in which we are talking about where  
16 there's this calendaring complication, if they truly are 99.9  
17 per cent all unrepresented parents, then perhaps a different  
18 motion would just be, if it is an unrepresented parent then a  
19 TSC is automatically set. Because I don't understand how a  
20 unrepresented parent will even come prepared to appear in  
21 conference without a TSC.

22 And that may -- and granted, that may be giving  
23 everybody a trial setting conference but unrepresented parent  
24 probably requires a trial setting conference to ensure that  
25 they are preparing appropriately for the next step. And that  
26 may fix the problem that Roberta --

1           **MR. WYNER:** Well, how many cases that are filed are  
2 filed by unrepresented parents? What per cent?

3           **UNKNOWN FEMALE:** It's filed by the district.

4           **MR. WYNER:** Or filed by a district. I mean it  
5 could be a huge number.

6           **MR. READ:** I guess my request is a lot simpler  
7 because my concern is a lot simpler. I'm just -- my only  
8 concern is the assumption that that first day of hearing is  
9 going to require consecutive days after that so that parties  
10 know whether that first day of hearing is actually going to  
11 be the beginning of a full hearing.

12                   And so my request would be just that OAH state  
13 formally that they're going to schedule a one-day hearing and  
14 assume that the hearing is going to start and end in one day.  
15 If that's not what the parties need then their first option,  
16 which I think is a really helpful one, is for the parties to  
17 get together and select hearing dates within the first 90  
18 days as it currently is.

19                   And if that's not a request that OAH inform the  
20 parties that absent that it's going to require a formal  
21 request by either party to have more than one day of hearing.  
22 In which case, you know, as far as trial setting conference  
23 versus simply ruling on a motion, I'm not so concerned. I  
24 just want to know what to do, what I have to do.

25           **ADMINISTRATIVE LAW JUDGE CLARK:** We need to move on  
26 so we have Constance's recommendation, Mr. Wyner's

1 recommendation and it sounds like one from Mr. Read at this  
2 point. So let's --

3 **UNKNOWN FEMALE:** And Ines had one, too.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** And Ines has one  
5 as well. So let's start with Constance Taylor. Down there,  
6 why don't you restate your proposal, Ms. Taylor, and then  
7 take a vote.

8 **MS. SAVAGE:** We'll see if we have a second.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** Is there a second  
10 on her proposal?

11 **MR. WYNER:** I withdraw my second.

12 **UNKNOWN MALE:** I'll second it.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Does everybody  
14 understand what her proposal is? Should we restate it one  
15 more time?

16 **MR. ROSENBAUM:** Yes.

17 **ADMINISTRATIVE LAW JUDGE CLARK:** Please restate it,  
18 Ms. Taylor.

19 **MS. TAYLOR:** My recommendation is that when a party  
20 files a request for due process hearing, wants to go forward  
21 on the first day, and requests additional days, that that  
22 party so state in the request and request a trial setting  
23 conference for the purpose of determining the dates.

24 **ADMINISTRATIVE LAW JUDGE CLARK:** And how does the  
25 Southern California group vote on that particular

1 recommendation?

2 **MR. WYNER:** Negative. I'm against.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Anybody in favor?  
4 In Southern California who's in favor of that? You need to  
5 vote. Raise your hands. Ms. Taylor, you didn't raise your  
6 hand, are you in favor of your own motion?

7 So I can't see everybody. Mr. Read, what's the  
8 count?

9 **MR. READ:** One.

10 **ADMINISTRATIVE LAW JUDGE CLARK:** One. Okay,  
11 that's, obviously we don't need to see who's opposed I guess.

12 Mr. Wyner, can you give us an abridged version of  
13 your recommendation or restate it, please?

14 **MS. SAVAGE:** Wait, should we vote up here on Ms.  
15 Taylor's --

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Oh, I'm sorry.

17 **MS. SAVAGE:** Yes.

18 **ADMINISTRATIVE LAW JUDGE CLARK:** Northern  
19 California. Ms. Taylor's recommendation?

20 **MS. SAVAGE:** So far is one, two, three, four.  
21 Okay.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** So then we move on  
23 to Mr. Wyner's. There were four votes for yes, I guess all  
24 opposed in Northern California, anybody? Two opposed?

25 **MS. SAVAGE:** One, two, three, five.

1                   **ADMINISTRATIVE LAW JUDGE CLARK:** Five. So Mr.  
2 Wyner, your recommendation?

3                   **MR. WYNER:** My recommendation is that in the due  
4 process request or due process complaint, there needs to be a  
5 statement as to whether you will require more than one day of  
6 hearing. And if you do, if the party makes that request,  
7 then the manual has to say that there's an obligation to meet  
8 and confer with the other side to see if you can agree on the  
9 number of days of hearing. Within, you know, within 15 days  
10 of a resolution session if it's filed by a parent or within  
11 15 days of the filing if it's filed by a school district.

12                   And then if the parties agree at the meet and  
13 confer, they will stipulate and notify OAH of available dates  
14 for hearing. If they can't agree, someone will file a motion  
15 for a trial setting conference and included in that will be a  
16 declaration that says, we met and conferred, we can't agree  
17 and therefore we wish to schedule a trial setting conference  
18 to set hearing dates.

19                   **MS. SAVAGE:** Is there a second on that?

20                   **MR. ROSENBAUM:** I'll second it.

21                   **MS. SAVAGE:** Steve Rosenbaum seconds it.

22                   **MR. ROSENBAUM:** Steve, just a friendly amendment.  
23 Rather than a declaration that there be an indication that  
24 parties have met and conferred.

25                   **MR. WYNER:** Yes, great.

26                   **MS. SAVAGE:** Okay.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Southern  
2 California, all in favor of that recommendation? Mr. Read,  
3 what's the count?

4           **MR. READ:** One.

5           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. All opposed  
6 in Southern California? Anyone?

7           **MR. READ:** Did you request a formal vote against?

8           **ADMINISTRATIVE LAW JUDGE CLARK:** I guess I don't  
9 need to I suppose. Then moving up here to Northern  
10 California, all in favor of Mr. Wyner's recommendation?

11          **MS. SAVAGE:** Four.

12          **ADMINISTRATIVE LAW JUDGE CLARK:** I guess -- opposed  
13 it's seven for Northern California?

14          **MS. SAVAGE:** Five.

15          **ADMINISTRATIVE LAW JUDGE CLARK:** Five opposed.

16          **MS. SAVAGE:** Okay, Ines. You're next. Your  
17 recommendation?

18          **MS. KUPERSCHMIT:** And you know, I'm okay with --  
19 this may or may not relate to this. I thought maybe this  
20 would actually fix the problem but if we need to move the  
21 issue of unrepresented parents and some special rules that  
22 may apply to like a different agenda item, I'm also open to  
23 that.

24                 But it seems to me that if we're talking about  
25 unrepresented parents and we're just not calling it what it

1 is, then a special rule that should exist for any  
2 unrepresented parent is that if an unrepresented parent  
3 either files a due process hearing or is filed against and is  
4 unrepresented, there should be a trial setting conference.

5 **MS. SAVAGE:** There's a comment from the web in  
6 agreement with your recommendation. Is there a second from  
7 the Committee on this?

8 **MS. SAVAGE:** I'll second it.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, Southern  
10 California, if you vote on the recommendation.

11 **MS. DOME:** But that's a separate issue, isn't it?

12 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm sorry, there  
13 was a question up here. Ms. Dome?

14 **MS. DOME:** It seems like her proposal is a separate  
15 issue from the other two that we're voting on. And I mean I  
16 think it's a great proposal but I think it doesn't address  
17 the other issues that are being addressed by the other two  
18 proposals.

19 **MS. SAVAGE:** So you want to defer it to a  
20 discussion of unrepresented parents?

21 **MS. DOME:** Yes, because I feel like, you know, I  
22 think that makes sense. But if my vote is -- my vote would  
23 not be for that because I think it excludes a lot of other  
24 situations that could occur that I think are addressed by  
25 the -- one of the other two proposals. So that would be my  
26 only concern.

1           **MS. SAVAGE:** So do we want to move it to a -- guys,  
2 are you okay with moving it as she said?

3           **MS. TAYLOR:** I am.

4           **MS. SAVAGE:** Okay. Move it to a discussion -- I  
5 don't know if we even have a discussion of unrepresented  
6 parents on our list today.

7           **ADMINISTRATIVE LAW JUDGE CLARK:** That's not but we  
8 can recommend it for the agenda item for the next Committee  
9 meeting.

10           Mr. Read, I think you have the final  
11 recommendation. Are you making a recommendation?

12           **MR. READ:** Yes. My recommendation is, I think  
13 recognizes that the trial setting conference may or may not  
14 be a reality currently. And all I'm requesting is that when  
15 OAH sends out a notice of due process hearing, it indicate in  
16 that notice that it assumes that the hearing will be a one-  
17 day hearing and if the parties require more they meet and  
18 confer and if they agree as is the current policy, that they  
19 can mutually agree to hearing dates within the first 90 days.  
20 If they can't agree then requesting more hearing days is  
21 going to take a formal request by a party.

22           **MR. WYNER:** Sounds like mine.

23           **UNKNOWN FEMALE:** Exactly. It may be just a -- is  
24 that different that Steve Wyner's or --

25           **MR. READ:** Yes, I think the difference between  
26 Steve's and mine is that Steven is saying that this is a

1 formal requirement that's part of the statute on drafting a  
2 request for due process and responses. And I don't see the  
3 statute that way. My request is for the notice of due  
4 process issued by OAH to identify that requirement.

5 **MR. ROSENBAUM:** Yes, yes. Second.

6 **MR. WYNER:** Second. Third.

7 **MS. SAVAGE:** Okay, Jonathan, you want to take a  
8 vote down there?

9 **MR. READ:** All right. All in favor? We have seven  
10 in favor. All right. All opposed? Abstaining? All right,  
11 one abstention.

12 **MS. SAVAGE:** Okay. Up here in Northern California,  
13 all in favor? We have -- unanimous. All of us. Nine.

14 Before we go to the next topic there was a comment  
15 from the web on the recording issue on the transcripts, and  
16 it was just a comment that they agree with the motion that we  
17 made that the transcript was not complete and took months to  
18 get. The district made accusations that were false and the  
19 family couldn't do anything due to the timeliness of getting  
20 a transcript. So --

21 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, 3e on the  
22 agenda is evidence binder colors. Ms. Brock, I think you  
23 recommended that. Why don't you go ahead and tell us about  
24 that?

25 **MS. BROCK:** Well, I know we discussed now doing S  
26 for student and D for district and everybody use numbers

1 which has been very helpful. But I notice that witnesses are  
2 kind of fumbling with the binders, especially when there are  
3 so many of them, and thought if we made it easier for them  
4 and had one color binder for district and one for student  
5 then we could say, you know, black binder number one or, you  
6 know, white binder so they aren't fumbling as much.

7 **MS. MCARTHUR:** Those colors or lack of color have  
8 too much connotative value. So I say change --

9 **MS. BROCK:** Red and blue. I just thought what are  
10 the most primary colors?

11 **ADMINISTRATIVE LAW JUDGE CLARK:** So your  
12 recommendation is that the Committee decide whether one party  
13 should use a white colored binder and the other party should  
14 use a black colored binder?

15 **MR. ROSENBAUM:** Or X and Y.

16 **MS. BROCK:** Well, if you have six white binders up  
17 there it's really hard for witnesses to fumble through and --

18 **MS. MCARTHUR:** To find the S and the D.

19 **MS. BROCK:** Right.

20 **MR. CORBIN:** Carl Corbin. Just to address this  
21 real quick, what we have in front of the binder is -- we have  
22 in real big letters 'Students' or 'Districts' and it's on the  
23 front of each binder. And I haven't seen a problem with this  
24 issue here.

25 **MR. ROSENBAUM:** I would say that should just be  
26 addressed, you know, at a prehearing conference, meet and

1 confer. It may make sense, I don't know if you want to make  
2 it a uniform rule.

3 **MS. MCARTHUR:** Right. I would agree with -- may I?

4 **MS. SAVAGE:** Sure.

5 **MS. MCARTHUR:** I would agree with what Stephen  
6 Rosenbaum said and it may very well be that in hearings you  
7 participate in, Tamara, might want to distinguish yourself  
8 with a color and you might propose, you see, I'm going to do  
9 X color, so nobody else does that color. But you do whatever  
10 you want.

11 **MS. BROCK:** Okay, I've heard from witnesses who,  
12 they aren't used to this kind of procedure whereas, you know,  
13 attorneys are, and witnesses who have never testified have  
14 said to me, you know, I'm up there and I'm really nervous and  
15 I'm fumbling around there, you know, taking up additional  
16 time because they're trying to make sure they get the right  
17 binder and they're picking up the wrong binder and so I just  
18 recommended that we make it as easy as possible for the  
19 witnesses to find --

20 **MS. MCARTHUR:** And I think what I'm trying to say,  
21 following Steve's point, is that it may be important in  
22 certain cases, but it may not be important in all cases and  
23 so addressing it on individual basis may work.

24 **MS. SAVAGE:** Jonathan, anything down there?

25 **MR. READ:** We have a comment.

26 **UNKNOWN MALE:** Well, the thought that the different

1 colors connote different things, it sounds funny -- and so  
2 you really, you can't do that without making people jumpy.  
3 (Inaudible) I mean in black and white, you know? Red and  
4 blue? Where are you? If it's a democratic crowd, you know,  
5 red and blue may mean something. And all of this  
6 (inaudible), I don't know why you can't say 'Student' on one  
7 and 'District' on the other. Why doesn't that work?

8 **MR. ROSENBAUM:** Chartreuse and teal.

9 **MS. BROCK:** If they take the wrong binder, they're  
10 still fumbling to find the right binder. If they open the  
11 wrong one, it was just recommended by several witnesses.

12 **MR. READ:** I would move that we don't adopt a  
13 formal color requirement.

14 **UNKNOWN MALE:** Second.

15 **MR. READ:** Do you want to take a vote on it?

16 **MS. SAVAGE:** I don't think we --

17 **MR. ROSENBAUM:** Voice vote.

18 **MR. READ:** All in favor of the motion to not adopt  
19 a color requirement? We're unanimous down here.

20 **MS. SAVAGE:** All in favor for no rule? Eight in  
21 favor. All opposed?

22 Okay, the next topic is the internet availability  
23 at district locations. Was this also you, Tammi?

24 **MS. BROCK:** Yes. This has come up on a number of  
25 occasions from probably every parent in our district, that at  
26 our district site they hold it in a school and districts have

1 internet access and parents don't so that they can easily  
2 type and send information to their witness room.

3           Districts have witness rooms. Parents don't.  
4 Their witnesses wait out in the hallway and it's also, you  
5 know, parents have recommended that it be held either at a,  
6 you know, a church or someplace, a recreational center, that  
7 has an extra room. Someplace where it's fair for all parties  
8 and they have the same luxuries that the school district has.

9           **MS. SAVAGE:** Jonathan, you guys want to start down  
10 there on this one?

11           **MR. READ:** Sure. I recall that we had -- maybe it  
12 was the last meeting or the meeting before that we had  
13 addressed the issue of meeting at neutral locations on  
14 request by a party. And I know that at least down in San  
15 Diego the hearings, when a party has requested it, have been  
16 conducted down at OAH in the San Diego office which would  
17 resolve that issue.

18           As far as hearings that occur in districts, I'm not  
19 sure what a recommendation from the Advisory Committee could  
20 do to require school districts to allow internet or make  
21 arrangements for internet availability.

22           I mean I'm certainly in favor of a requirement by  
23 a -- in a particular hearing issued by the judge that the  
24 participants do not log onto the internet so that everyone's  
25 on the same playing field. But I don't see how the Advisory  
26 Committee can make a recommendation that school districts

1 make internet available for everyone.

2 **MS. BROCK:** I think it's more than just having  
3 internet available. It's also the school picks a site and  
4 the parents have no choice. That if they'd rather have it in  
5 a neutral facility because the district not only has internet  
6 access, they have witness room, they have, you know, the bell  
7 rings all the time when the students are coming in and out of  
8 class, there are announcements.

9 It's just -- it's a noisy setting and it's very  
10 distracting. It would be much, you know, I think parents  
11 should have an input into it and right now if the parent  
12 requests someplace else it doesn't happen. It's just where  
13 the school decides they want to hold it.

14 **MR. READ:** With that issue, my recollection was  
15 that OAH had already made a decision regarding the issue of  
16 hearings in neutral locations.

17 **MS. SAVAGE:** Right. And I think this topic is --  
18 we're trying to limit our discussion today just to the  
19 internet availability. Kent, do you have a -- we have a  
20 comment from the public.

21 **UNKNOWN MALE:** This was the subject of an extremely  
22 long discussion about two meetings ago and the recommendation  
23 -- there was also a recommendation from two meetings ago and  
24 it wasn't as I recall (inaudible) reflect the minutes. It  
25 was a long discussion.

26 **MS. BROCK:** Well, back to the issue, though, of the

1 internet connection for the district versus the parents not  
2 having that ability. The district can sit there and type to  
3 the witness room. The witness can walk in with a lot of  
4 information that the parents don't have that same --

5 **MS. SAVAGE:** I think -- Steve, go ahead.

6 **MR. ROSENBAUM:** I just think the issues of  
7 neutrality and convenience including internet access should  
8 be addressed at a prehearing conference and then that OAH be  
9 mindful of those issues. It's really to neutrality and  
10 convenience equity in facilities that parties have available.

11 **MS. SAVAGE:** And I would just add the issue of what  
12 the witness -- sharing of information should also be  
13 addressed by the judges, that they make it clear at the  
14 beginning of the hearing, witnesses are not supposed to be  
15 communicating or talking with each other. So that that  
16 information from one witness doesn't get shared whether it's  
17 via email or lunch at the break.

18 **MR. READ:** And my experience is they typically do.

19 **UNKNOWN FEMALE:** Right.

20 **MR. ROSENBAUM:** They do share?

21 **MS. MCARTHUR:** No.

22 (Overlapping voices)

23 **MS. BROCK:** That's not what happens. They get  
24 breaks in between each witness, they prep their witnesses,  
25 they have lunch breaks, they re-prep them.

26 **UNKNOWN FEMALE:** But there's nothing in the law the

1 prohibits a district attorney or any attorney from talking to  
2 their witnesses during breaks and my experience even in your  
3 district has been that when a parent has made a request for a  
4 neutral location that the hearing has been moved.

5           And I haven't been in that district for years now,  
6 but I'm just saying my experience has always been that  
7 whenever anyone makes a request for a neutral location that  
8 it's been moved to a neutral location. And I don't know  
9 that, I mean I'm new to the Committee but I don't think that  
10 this is like -- I think this is already addressed it seems.

11           **MS. BROCK:** I'm not sure if parents realize that  
12 the district has internet access and that they have the  
13 ability to also have a witness room and that they know what  
14 their rights are in regards to, you know, what they should be  
15 allowed to have.

16           I think that -- my personal preference is that  
17 hearings should always be held in a neutral location. Both  
18 sides have equal access to everything.

19           **MR. CORBIN:** Carl Corbin. Again I know that we  
20 discussed that issue before as Kent had mentioned. I guess  
21 I'd like to, if we get a motion or something on it. If you  
22 do have specific issues regarding this issue, you know your  
23 district, for example many of the districts I represent don't  
24 have internet capability or wireless, that you raise that  
25 issue at a prehearing conference and get a specific order  
26 from the judge.

1           **MS. SAVAGE:** Well, I guess the other, unless  
2 there's some comment from Southern California, the other  
3 question that it raises with me is should anyone have  
4 access -- should anyone be accessing the internet during the  
5 hearing? You know, logging on or doing Google or whatever  
6 you can do. Is that even appropriate while you're in  
7 hearing? And could that be addressed by OAH? Eliza?

8           **MS. MCARTHUR:** I'm terribly opposed to even raising  
9 the question as to whether I or somebody I'm working can get  
10 on the internet. I mean that's a restriction of a kind  
11 that --

12           **MS. SAVAGE:** When you're in a hearing? Like you're  
13 in questioning witnesses?

14                   Overlapping voices)

15           **MS. MCARTHUR:** No.

16           **UNKNOWN FEMALE:** -- limited to, because I mean I  
17 think that, yes, I think that's a different issue.

18           **MS. SAVAGE:** Right.

19           **MS. MCARTHUR:** But accessing the internet.

20           **MS. SAVAGE:** If we're in a hearing, much like our  
21 cell phones have to be turned off, I'm thinking it's kind of  
22 courtroom decorum that our internet access would be cut off.  
23 That was -- I'm sorry.

24           **MS. MCARTHUR:** But if I had lunch and I wanted to  
25 see something on the internet that I would be prohibited from  
26 doing it --

1           **MS. SAVAGE:** We're not sequestered.

2           **MS. BROCK:** But that's exactly what --

3           **MR. READ:** Comment down here? You have a comment,  
4 sir?

5           **UNKNOWN MALE:** Yes. Leading into the prehearing  
6 conference for unrepresented parents is again certainly not  
7 giving us a level playing field.

8           And I guess I want to go back to Steve's comment --  
9 well, you know, if you're unrepresented that's tough. That's  
10 really not the language of the statutes. The statute -- the  
11 whole scheme that we have here that have a hearing situation  
12 instead of a courtroom situation, is that parents actually  
13 should be able to get hearings and actually should be able to  
14 get a reasonably fair shake when they go in there without a  
15 lawyer because people don't have a lot of money.

16           So we should actually be able to have things so  
17 that, you know, we can go in there unrepresented and have a  
18 shot. And if it's really left up to the judge, the  
19 unrepresented parent is not even going to think of internet  
20 access. And he's not going to think to -- that the district  
21 is in fact going to use the internet to talk to their  
22 witnesses and essentially suborn them during the hearing.

23           And you wouldn't think to do that yourself so if  
24 things are just left up to the discretion of the judge, the  
25 parents are not going to get a fair shake.

26           **MR. READ:** Steven?

1           **MR. WYNER:** I just have one comment. And to this  
2 gentleman. You may have misinterpreted what I said. I  
3 didn't say that's tough. That's your interpretation. I said  
4 if you're a parent and you're going to a hearing and you're  
5 not represented, you are at a disadvantage.

6           **UNKNOWN MALE:** That's true.

7           **MR. WYNER:** That's right. That doesn't mean that I  
8 think that's just tough. It just means that you're  
9 disadvantaged. I feel bad for many parents who go to  
10 hearings by themselves and get clobbered.

11           But that's a likely outcome. And if you think it's  
12 not, then you need to read a lot of decisions. And you'll  
13 see that it is.

14           **UNKNOWN MALE:** You'll remember that --

15           **ADMINISTRATIVE LAW JUDGE CLARK:** Mr. Wyner, we need  
16 to keep the subject focused on the issue at hand. Ms.  
17 Savage, do you have a comment?

18           **MS. SAVAGE:** I have a comment from the public  
19 saying, "One particular district, Mt. Diablo, uses a room  
20 that people outside can easily hear or be overheard. They  
21 also use recording devices that record during confidential  
22 mediations. The schools are at an advantage. When I asked  
23 to move the district opposed. I think there needs to be a  
24 neutral location. Please." So this would be a comment in  
25 favor of what Ms. Brock is saying.

26           **MR. ROSENBAUM:** Just a quick point of information.

1 The parent manual does address both location of the offices,  
2 I mean of the hearing, parent can request, so you're  
3 concerned your parents know. The parent can be moved and  
4 also indicates the witnesses are not to hear the testimony of  
5 others. So it is, again, I want to refer people back to the  
6 manual or other resources.

7 **MS. SAVAGE:** So I would be willing to make a motion  
8 that much like our cell -- at the start of hearing, that the  
9 presiding judge, much like they remind us to turn our cell  
10 phones off, that all internet access is turned off as well  
11 during the course of the hearing.

12 **UNKNOWN MALE:** In the hearing room.

13 **MS. SAVAGE:** In the hearing room during the course  
14 of the hearing.

15 **UNKNOWN MALE:** Otherwise Eliza can't get on the  
16 internet.

17 (Overlapping voices)

18 **MS. MCARTHUR:** I'm so good at it, too.

19 **UNKNOWN FEMALE:** That's a very bad idea. Certainly  
20 witnesses shouldn't be communicating with anyone while  
21 they're on the witness stand, but as a lawyer I want to know  
22 whether a witness is wrong about something. I use Google all  
23 the time. It's not a matter of etiquette.

24 We all have our laptops on. I don't think it's  
25 anybody's business what we're doing with them. I carry  
26 around my own internet access and so far I haven't had the

1 displeasure of having a hearing at a place where I can't get  
2 on line.

3 But that would certainly be a concern for me if the  
4 other side could be checking Google and I couldn't while  
5 examining witnesses. I think that's absolutely fair and  
6 crucial to me.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** So is there a  
8 second for your motion, Ms. Savage? For your recommendation.  
9 Who made the recommendation?

10 **MS. SAVAGE:** I did.

11 **MR. WYNER:** Could you repeat it?

12 **MS. SAVAGE:** Sure. I recommended that much like we  
13 have our cell phones turned off at the start of hearing, that  
14 any internet access is turned off at the start of hearing.

15 I'm tempted to withdraw my motion given the public  
16 comment. And I'm going to. Because I didn't realize people  
17 used it as regularly. I don't. So if it's not --

18 **MS. BROCK:** It doesn't give equal access to  
19 parents. So I take your motion and ask that internet access  
20 be turned off during a hearing.

21 **MS. SAVAGE:** Anyone second it? All right. There's  
22 no second so we're going to move on.

23 I want to remind everyone before we get to the next  
24 topic that there's a concern that as part of the Committee  
25 when the public is commenting that we are not attending as we  
26 do when Committee members are talking. So any side

1 conversations or essentially let's give the same courtesy to  
2 the public as we're expecting of ourselves.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** One more comment.

4 **MS. SAVAGE:** There's another comment regarding the  
5 issue we just talked about. Witnesses are also prepped well  
6 before hearings and told that -- told what to say and what  
7 not to say. That really needs to stop or be a question posed  
8 during hearings to make sure they are not geared or steered  
9 in certain directions. Lawyers ask to take breaks in the  
10 middle of testimony in order to stop a witness from saying  
11 something. Okay.

12 **ADMINISTRATIVE LAW JUDGE CLARK:** I have 12:05.  
13 Let's take a ten minute break and come back at 12:15 and  
14 start again to finish the agenda items.

15 **ADMINISTRATIVE LAW JUDGE CLARK:** We're back on the  
16 web. I think the webcast is back up. You can -- I need your  
17 microphone down in Southern California and take your seats  
18 and let's go ahead and get started again. I think there's  
19 some conversation still going on there.

20 **MR. READ:** We're still making our way back.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

22 **MR. READ:** I'll step out in the hallway --

23 (Overlapping conversations)

24 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, we're going  
25 to go ahead and get started. We stopped at Item 3g I believe  
26 was the last agenda item where we left off.

1           Okay, Southern California is back with us down  
2 there?

3           **MR. READ:** We're still missing three of our panel  
4 members and a lot of our audience. If we could just wait one  
5 more minute.

6           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

7           **MR. READ:** That would be appreciated.

8           **MR. ROSENBAUM:** There was a question during the  
9 break about, and I think this is confusing to people who are  
10 following online that interpreter is being picked up and I  
11 don't know that there is any way to -- probably with a  
12 general mike that can't be avoided. I don't know if there's  
13 any way to --

14           **ADMINISTRATIVE LAW JUDGE CLARK:** Move the mike  
15 away?

16           **MR. ROSENBAUM:** Move the mike some way so that --

17           **UNKNOWN FEMALE:** She could move but it would still  
18 be picked up.

19           **MR. ROSENBAUM:** She's able to pick up at that point  
20 but -- I think that's what lead to some of the comments on  
21 line that people were talking during conversations.

22           (Overlapping voices)

23           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, we need to  
24 get started again because we do have quite an ambitious  
25 agenda still. And we took quite a bit of time in the last  
26 topic so, all right, Steve, 3g is the hearing process closing

1 briefs. And I think that was recommended by you, Ms. Savage?  
2 And I don't know if you had any questions over the web over  
3 the break?

4 **MS. SAVAGE:** Not -- there was one. Before we get  
5 onto the closing briefs there was a comment from the web  
6 that, "I think the big reason you OAH Advisory was created  
7 was because of parent coming to hearing without  
8 representation. Many parents are disadvantaged that go to  
9 hearing without representation. But that doesn't mean that  
10 their opinion here about reforming OAH should be shrugged off  
11 as simple statements of parents are disadvantaged." We know  
12 that.

13 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, thank you.

14 **MR. READ:** Can I just make a clarifying remark?  
15 Down here in Southern California we have an interpreter  
16 that's interpreting this meeting and we have a microphone  
17 that's situated in the middle of the Committee. And so I  
18 think what's happening is when the Advisory Committee is  
19 speaking they're filling up the microphone but when we have  
20 participation from our audience and that participation is  
21 going through the interpretation which makes it appear that  
22 folks are talking while members of the audience are talking.  
23 And I just want to clarify that's not the intent and we're  
24 going to try and address that situation by having our  
25 interpreter perhaps be in the corner. Okay.

26 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Savage?

1           **MS. SAVAGE:** Sure. I think the question, it was,  
2 you know, asked of me to submit to the Committee was are  
3 there any -- are there default rules that OAH currently has  
4 for the length of opposing brief, the timing of it, et  
5 cetera. And if not, should there be?

6           **MR. READ:** And I have a question down here  
7 regarding just the procedure, whether or not there's a rule  
8 for closing briefs, whether they're always concurrent or  
9 sometimes there's a closing brief and then a reply and then a  
10 response.

11           **MS. SAVAGE:** Right.

12           **ADMINISTRATIVE LAW JUDGE CLARK:** And if there's a  
13 question for OAH generally there's no set procedure. It's  
14 discretionary with the individual judge. So if there's some  
15 recommendation that the Committee wants to make then that's  
16 open for discussion. If there's any discussion?

17           **MS. SAVAGE:** Eliza?

18           **MS. MCARTHUR:** May I just make a suggestion that I  
19 think the timing, the length, whether it's concurrent or  
20 responsive, that is so dependent on a particular case that it  
21 should really be left to the discretion of the judge. That's  
22 my two cents. And I'm in possession of the food, so.

23           **MS. SAVAGE:** I think the problem that was presented  
24 is that it can be so different that one -- I mean, I'm giving  
25 this as a hypothetical, one judge may say only 15 pages and  
26 another judge says 50 pages. But he didn't get this same

1 case. So I think is there any consistency or any default  
2 rule that all else considered, this should be it. Maybe  
3 there's a situation where there needs to be more. I don't  
4 know.

5 **MS. MCARTHUR:** My sense is still that, you know, if  
6 the delta is between 15 and 50 pages then I think I would  
7 question it, you know, and I think the cases are the same. I  
8 would want to know why there is such a delta, such a  
9 disparity in the recommended numbers. But I still think it's  
10 so, so individually based that I worry about having too many  
11 rules so to speak.

12 **MS. SAVAGE:** Steve?

13 **MR. READ:** Eliza?

14 **MS. MCARTHUR:** Yes.

15 **MR. READ:** There appears to be a bag of Fritos  
16 right next to the microphone?

17 **MR. ROSENBAUM:** It's Cheez-its and they're low salt  
18 sodium, Jon.

19 **MR. READ:** My concern was not what you were eating  
20 but the concern of the other Committee members who couldn't  
21 hear all of the questions.

22 **MR. ROSENBAUM:** Could I make a comment?

23 **MS. SAVAGE:** Yes.

24 **MR. ROSENBAUM:** No, I agree with Eliza. I think  
25 again proliferation of rules is a problem and something like  
26 this is peculiar to the case that both sides can vigorously

1 argue with this unfair determination about page length or due  
2 dates and concurrent versus non-concurrent. I think it  
3 should just be left to the discretion of the judge in each  
4 case and the parties to argue out.

5 **MS. SAVAGE:** Is there any comment from Southern  
6 California?

7 **MR. HARBOTTLE:** Same here. Dan Harbottle  
8 speaking. I think my experience has been that there's rarely  
9 a real disparity between what one party wants to use as their  
10 brief length and the other. So any disputes have always been  
11 resolved at the time of the closing. So I wouldn't change  
12 the rules as they stand.

13 **MR. READ:** I guess my only addition to that is that  
14 oftentimes the ALJs won't want to discuss the format of the  
15 closing until the end of testimony in which case if you're  
16 expected to put on an oral argument, you may need to be  
17 prepared for that even if you're ultimately just going to do  
18 written. And it would be nice to have that agreement at the  
19 outset of the hearing so that we're not preparing for an oral  
20 that we don't need to.

21 So my request, my motion is that at the beginning  
22 of the hearing the parties, the judges direct a discussion,  
23 the parties as far as the type of closing that's going to  
24 occur.

25 **MR. ROSENBAUM:** Second.

26 **MR. READ:** All right, Southern California, did we

1 all hear that? We're ready to vote? All in favor? Five,  
2 six. Six in favor. All against? Abstentions? Two. Two  
3 abstentions.

4 **MS. SAVAGE:** Okay. Northern California, who's in  
5 favor of having it determined at the outset? Seven. Oh,  
6 six, sorry. All opposed?

7 **UNKNOWN FEMALE:** I'm not opposed. I just don't  
8 know enough about it to --

9 **MS. SAVAGE:** Abstention. Okay. Any other  
10 abstention? Two. Before we move on to the next topic I want  
11 to follow up on the public comment that came in before.  
12 There's another follow-up from the web.

13 "If we know that the parents are at a disadvantage,  
14 then why does OAH continue to make (inaudible) on the  
15 parents?" And maybe this is something we can talk about or  
16 have some discussion about during public comment. So I will  
17 bring it up again.

18 **ADMINISTRATIVE LAW JUDGE CLARK:** So then are we  
19 ready to move on to the next topic?

20 **MS. SAVAGE:** Yes.

21 **ADMINISTRATIVE LAW JUDGE CLARK:** The mediation  
22 process. And the first one is continuity of mediators and I  
23 do think that was something you recommended --

24 **MS. SAVAGE:** Right.

25 **ADMINISTRATIVE LAW JUDGE CLARK:** -- and wanted to  
26 discuss.

1           **MS. SAVAGE:** One of the issues was brought up to me  
2 and I've experienced it, is when you have a continued  
3 mediation ensuring that you have the same mediator from your  
4 first mediation to your second. And whether -- I think  
5 that's important so that the parties have consistency. And  
6 that's my recommendation, that we keep it the same mediator.

7           **MR. ROSENBAUM:** Second.

8           **MS. SAVAGE:** Any discussion down in Southern  
9 California on this?

10           **MR. HARBOTTLE:** No, I think we generally agree  
11 that's best but I think that sometimes it's just best to take  
12 the time if you have to mediate and you don't have the same  
13 person, you don't want to lose the possibility of mediating  
14 just because of the fact that you may not have the same  
15 mediator so while it's preferable I think, I don't know that  
16 we need a rule that it's mandatory in any way. It would just  
17 be a statement that we recommend that there be consistency if  
18 possible.

19           **MR. CORBIN:** I'm Carl Corbin. I'd like to ask  
20 Judge Clark, is that -- what's OAH's current practice on this  
21 issue? Do you have a rule or a --

22           **ADMINISTRATIVE LAW JUDGE CLARK:** Typically we try  
23 to assign the same mediator to the mediations. And if  
24 there's multiple cases with the same student, we try to  
25 assign to the same mediator. Sometimes the mediator is not  
26 available or has conflicts and we have to reassign people but

1 generally our practice is to try to assign and remain the  
2 same mediator on the matters.

3 **MR. READ:** And I've had a lot of success even when  
4 we haven't been able to resolve all cases of mediation, with  
5 ongoing involvement by the mediator. And maybe Roberta, is  
6 the question that we've had mediation and there's a request  
7 for continued involvement for another mediation and OAH  
8 assigned somebody different?

9 **MS. SAVAGE:** I think it's two. I think it's one,  
10 where you have a mediation and you set a second one and your  
11 second mediation for whatever reason you have a different  
12 mediator. That's one scenario.

13 The other is when you have multiple cases of the  
14 same student and you're having different mediators mediating  
15 different cases, where for continuity's sake it would be good  
16 for that mediator, for all parties if the mediator is privy  
17 to prior disputes or prior cases. It might help the process.  
18 So I think it's two situations.

19 **MS. MCARTHUR:** May I?

20 **MS. SAVAGE:** Eliza.

21 **MS. MCARTHUR:** But I think that it's already a  
22 practice. It seems to me that when you have a continued  
23 hearing date and you want the same mediator, because I can  
24 foresee a situation where you both might not want to have  
25 that mediator come back again, then you ask for that to be  
26 the case. It's already a practice. You make it more

1 definitive by, you know, making your wishes known and it may  
2 be that you don't want that mediator to come back.

3 I'm not sure this requires more than what OAH is  
4 already doing, I guess is what I'm trying to say.

5 **MS. SAVAGE:** Well, I think the question being posed  
6 to me is, is there a general -- I mean does OAH generally re-  
7 assign the same mediators to, in the same matter, plus if  
8 there's multiple cases of a particular student or even a  
9 particular family.

10 **MR. ROSENBAUM:** Sounds like that's --

11 **ADMINISTRATIVE LAW JUDGE CLARK:** And we do try to  
12 make that -- those assignments. So it is one person doing  
13 the mediation for all those cases. Like you said, sometimes  
14 you can do it but sometimes you can't.

15 **MS. BROCK:** Well, does OAH go back and look when  
16 they get a request to see other cases on a child? Don't they  
17 just look at a piece of paper and assign a mediator?

18 **ADMINISTRATIVE LAW JUDGE CLARK:** There's a lot of  
19 things that go into making assignments but to quickly recheck  
20 and see if there's other open cases, sure.

21 **MS. SAVAGE:** Yes?

22 **MS. CHILCOTE:** Is -- I mean coming from the  
23 perspective again of a parent who might be representing  
24 themselves or doesn't know, is this in the handbook? Or is  
25 it harmful to make a recommendation so that it's in the  
26 minutes and the parents can be aware of it so that they can

1 ask for a continued or in your case, a non-continued  
2 mediator?

3 **MS. BROCK:** Or can you ask for a specific mediator  
4 you have worked with?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, you can -- I  
6 think that is in our manual in the user guide and it's also  
7 on -- there are some instructions on our website that says  
8 that. We do our best to honor your requests for mediators.  
9 And we think the mediation process is a good process and  
10 really helps resolve cases so if there's people you work with  
11 better than others then we try to honor that if we can.

12 But sometimes we just can't do that. They're not  
13 available, they may be in hearing, they may have multiple  
14 mediations, so -- I mean you can always make that request.

15 **MS. MCARTHUR:** But I think Kate's point is well  
16 taken, that perhaps just, if it's not there already -- I  
17 can't remember -- some verbiage to this effect so that we do  
18 not forget the unrepresented parents is in order. So we need  
19 to check what's in there, which Stephen is doing.

20 **MR. ROSENBAUM:** This is a draft, Ms. Chilcote, I'm  
21 not sure the final one has it.

22 **MS. SAVAGE:** So possibly there's nothing to add.  
23 There may or may not be.

24 **MS. MCARTHUR:** Possibly there is.

25 **MS. SAVAGE:** Right. There may or may not be  
26 something to act on on this.

1           **MS. BROCK:** You know, I know that there was a  
2 parent who spoke to the mediator prior to the mediation and  
3 then the mediation date got moved and a different mediator  
4 showed up. So all that history was gone. She spent an hour  
5 on the phone with someone and then had to go through the  
6 whole thing again and she wasn't notified it was going to be  
7 someone different, it was just someone different showed up.

8           So I think that there needs to be some type of  
9 guideline and, you know, I mean whether this is the way it  
10 should be or these are the guidelines aren't, you know, what  
11 we would like it to be.

12           **MR. ROSENBAUM:** Point of information. Just looking  
13 at least, I have a draft here. It looks like in two places  
14 it's addressed that mediation can be continued to another day  
15 if discussion is ongoing and would be beneficial. That's  
16 mentioned in two places. So it's not explicit on that but I  
17 think that hopefully would made -- it could be made clearer  
18 or explained.

19           **MS. SAVAGE:** So I guess the question is in what  
20 you're talking about, Tammy, would be if a parent or a  
21 district or any party has talked to a mediator about their  
22 case and they're going into mediation next week and then  
23 something makes that mediator unavailable on that day, should  
24 the parties be notified so they could reschedule it to  
25 maintain that mediator. I would support a recommendation  
26 like that. Is there any comment from Southern California on

1 that?

2           **UNKNOWN FEMALE:** The mediator is already identified  
3 on the OAH calendar online so can't the parties check and see  
4 if their mediator is no longer available and then request  
5 continuance to a time when that mediator is available?

6           **MS. BROCK:** You're going to trust the online system  
7 when one mediator's assigned three cases -- I mean have you  
8 checked the calendar to see?

9           **MS. SAVAGE:** I think the question is if the  
10 calendar is accurate or not. So you could check it and the  
11 day before it still says Judge So-and-, you know, Judge X is  
12 going to be there but then in reality Judge Y shows up or  
13 something. So I -- we could check it but I don't know if  
14 that's always accurate. Do you have --

15           **UNKNOWN FEMALE:** Then you should find out --

16           **UNKNOWN FEMALE:** We get calls typically a day or  
17 two before mediation from the mediators, so, you know, to  
18 check in and about how mediations -- if there's anything we  
19 want to discuss with them ahead of time. So we tend to know  
20 a few days prior who that mediator is going to be. So I  
21 never had issues with the calendar I guess in that respect in  
22 the same --

23           **MS. KNOX:** I have. I have had issues where I've  
24 had -- this is Christian Knox -- where I have had a mediation  
25 and I've had a conversation with an ALJ about the mediation  
26 and everything's good. I checked the calendar and then I

1 show up at mediation and it's somebody else.

2 **UNKNOWN FEMALE:** So have I.

3 **MS. BROCK:** Yes. And that's what this other parent  
4 complained about, too.

5 **MR. READ:** We have a comment down here.

6 **MR. HARBOTTLE:** Well, as far as I can tell my  
7 experience in mediation is fine. Judge Halpren was great and  
8 so I have no complaints. But I guess one observation I'll  
9 make is that if somebody doesn't like the mediator it sounds  
10 like a good idea to change the mediator. Because if  
11 everybody isn't happy it's not going to work.

12 And the notion that we're supposed to check the  
13 website and remember to do that, for one thing aren't  
14 current. That's not okay. If you know the mediator -- if  
15 OAH knows the mediator is going to be different, why not  
16 notify people? You know, we're planning to send a different  
17 mediator. Send an email or something. Is that unreasonable?

18 **MS. SAVAGE:** So is there anything -- is there any  
19 more discussion from Southern California?

20 **MR. READ:** No.

21 **MS. SAVAGE:** Is there any recommendation that we're  
22 wanting to make?

23 **MS. KNOX:** Didn't you make one? I put it down.

24 **MS. SAVAGE:** Yes, I think -- what was my  
25 recommendation?

26 **MS. KNOX:** That the parties get notified if the

1 mediator changes after the initial contact.

2 **MS. SAVAGE:** Right, so Jodi, in the situation where  
3 you described where you hear from the mediator, if after that  
4 call the mediator is going to be changed, that the parties be  
5 notified so it can get rescheduled. So that you can stick  
6 with that same mediator. We have public comment.

7 **MS. SHULES:** Well, it just might be cumbersome  
8 because one person might want to change the mediation, the  
9 other person -- oh, this is Kim Schules (Phonetic) -- but one  
10 person might not want to change the mediation and then  
11 there's several calls by the judge, you know, trying to  
12 figure out logistically. Are they just notified FYI or are  
13 they being notified to change it?

14 **MS. MCARTHUR:** How about if we eliminate from the  
15 recommendation the criterion 'after the initial contact'  
16 because how the heck is the person who is going to be maybe  
17 making the changes administratively know whether contact has  
18 taken place or not? Could he be just notified when a change  
19 is made?

20 **MS. BROCK:** The mediator is supposed to contact you  
21 a couple of days prior to a mediation.

22 **MS. MCARTHUR:** I know, what if it's one day?

23 **MS. BROCK:** Well, and you give them a lot of  
24 information on the phone. They ask for a lot of information  
25 and then, you know, two days later somebody else shows up.  
26 And you've just wasted, you know, I mean parents if they have

1 an attorney get charged for that if, you know, the attorney  
2 talks to them.

3 So I think after the initial contact if it is  
4 someone different that that party should be given the option  
5 of whether to keep that person or to take the new person or  
6 to, you know, try and reschedule.

7 **MS. MCARTHUR:** Well, how does OAH know whether  
8 initial contact has taken place at the time OAH may be  
9 changing the mediator? Do you get all that? I mean it just  
10 seems like a lot of work.

11 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, it is a lot  
12 of work calendaring for a statewide system with the number of  
13 mediations that we do, but there are emails from judges.  
14 They leave notices in the cases. There's any number of  
15 different ways we could get that.

16 But it's your recommendation, it's your system that  
17 you want to change, so if there's a recommendation of  
18 something that we can do different, then you go ahead and  
19 make that recommendation. And we'll see if we can institute  
20 it.

21 We generally try to keep the same mediator that's  
22 in your scheduling order. We give you that person. We  
23 generally try to give that and if we're changing it we try to  
24 notify the parties that it's been changed. But it doesn't  
25 sound like that's happening consistently so maybe we need to  
26 just tighten that up. I'm interested in whatever the other

1 input is about how the mediators are assigned.

2 **MS. BROCK:** So I second your motion, if that was  
3 kind of a motion.

4 **MS. SAVAGE:** Okay. Is there any more discussion on  
5 the recommendation that if there's going to be a change after  
6 the mediator has spoken with both parties that the parties be  
7 notified so they can change the date to stick with that  
8 mediator?

9 **UNKNOWN FEMALE:** If they choose.

10 **MS. SAVAGE:** If they choose. Okay. We can start  
11 the vote up here. All in favor? Four, five, six -- eight.  
12 Opposed? Abstaining? One. Southern California?

13 **MR. READ:** Those in favor? Four, five -- all  
14 right, five in favor. Those opposed? Abstentions? Three.  
15 Three abstentions.

16 **MR. ROSENBAUM:** Do those abstentions go with the  
17 majority down there or the majority up here?

18 **MS. SAVAGE:** The next is I think something I  
19 raised. I don't know if we say (inaudible).

20 The next one is another topic that I brought to the  
21 table which is how are the mediators being supervised or  
22 monitored so that there is a concern that some of the  
23 mediators are giving, I would assume in this situation,  
24 unrepresented party's legal advice as part of theirs,  
25 although I have experienced judges advising my clients in  
26 front of me.

1           So I guess the question as posed to OAH, what is  
2 the monitoring and supervising of the mediators and what  
3 their neutrality, you know, how they're supposed to be  
4 neutral third parties in the process?

5           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not really  
6 sure -- the mediators are evaluated yearly. All the judges  
7 are subject to yearly observations. And we use the  
8 evaluation forms to monitor specific incidents so if you're  
9 having trouble with a specific mediator that you think is  
10 going outside of what would be reasonable, that's what that  
11 evaluation process is for and that's why it's anonymous as  
12 well. So that you don't have to put your name on it but you  
13 can identify the judge and at least bring those situations to  
14 my attention so that I can perhaps watch somebody closer or  
15 talk to them about the concerns.

16           **MR. CORBIN:** Judge Clark, I've got a question.  
17 This is Carl Corbin. A mediator showed up at a couple of  
18 mediations, different mediator, and they had had evaluation  
19 forms, et cetera, would be printed. We followed up, asked  
20 for one, and they said not quite done yet. So my question  
21 is, are we still -- is OAH providing mediation forms,  
22 evaluation forms?

23           **ADMINISTRATIVE LAW JUDGE CLARK:** And I am sorry.  
24 That has been a problem because of the budget and because of  
25 the budget issues getting them printed has been difficult.  
26 But they are supposed to be printed and available and we

1 should be handing them out or mailing them out on the cases  
2 that were held but we just haven't had them printed. I'll  
3 follow up with my office about the status of the evaluation  
4 forms and let you know.

5 **MS. BROCK:** At the moment --

6 **MR. ROSENBAUM:** I was going to say, shouldn't they  
7 be online?

8 **MS. BROCK:** Yes. I mean if you have it online --

9 **MS. SAVAGE:** Before we go to more -- any discussion  
10 from Southern California on it?

11 **MR. HARBOTTLE:** Just -- I heard somebody say it up  
12 there. I think other forms are online. I think that they  
13 can just be, a PDF form can be established on the site and we  
14 can download and print it if we need to find it and print it.  
15 I'm not sure if that presents a lot of expense.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not sure.  
17 It's something, if you want to make that recommendation, I'll  
18 look into it for sure as well. But some of the forms are  
19 Scantron types of forms, you fill in bubbles and I think we  
20 have a process for their score. So your comments are written  
21 on the back but I think on the front you bubble in, you know,  
22 how was he? Was he neutral? One through five. And those  
23 are actually scored, you know, like a --

24 **MS. SAVAGE:** But if we printed it at our office and  
25 then could fill it in, would it still work through the  
26 scoring?

1           **ADMINISTRATIVE LAW JUDGE CLARK:** I would have to  
2 check. I don't know the answer to that.

3           **MR. ROSENBAUM:** We can make that recommendation? I  
4 move that a recommendation -- second. Then I call a  
5 question.

6           **MR. READ:** Suggestion down here?

7           **UNKNOWN MALE:** Well, yes. The Registrar of Voters  
8 down here in San Bernardino, you know, you can register on  
9 line and they give you a form. You fill in the bubbles and  
10 everything else like that, so, you know, it shouldn't be real  
11 difficult if there's a problem getting the bubbles filled in  
12 properly online to ask the Registrar in San Bernardino  
13 County. They can tell you how to do it.

14           **MR. READ:** Tania?

15           **MS. WHITELEATHER:** I am concerned because I know  
16 that I participated in a number of mediations where mediators  
17 I think have gone beyond the pale and have said no,  
18 absolutely you're going to lose, to either side.

19                   And I would like to see OAH set some sort of  
20 general tone for mediators that, granted they have opinions.  
21 They come in they're there and their opinions are often  
22 helpful. But in two cases I know when they were wrong and  
23 when they were right.

24                   But to be telling a client, especially when you  
25 have -- one of them was an unrepresented individual and the  
26 unrepresented individual was told 'you will lose against the

1 district' and she didn't. She did a very good job on her  
2 own. But to have this sort of statement coming from a  
3 supposedly impartial mediator who hasn't seen the evidence  
4 and hasn't heard the testimony, I think there should be some  
5 sort of position from OAH that we're not going to have  
6 mediators telling them 'you're going to lose.'

7 **MR. READ:** I guess my response to that is that I've  
8 seen various types of mediators, some who just kind of  
9 facilitate a discussion among the parties or back and forth  
10 between the parties, and some that take a more assertive  
11 role. And I've always found that the ones that take a more  
12 assertive role are more effective.

13 I don't necessarily mind if they give an opinion or  
14 present some hard arguments to my client or to any party and  
15 in my experience with mediation in the courts is that they  
16 often or usually do that in order to try to get some  
17 movement. So I don't necessarily have a problem with it.

18 **MR. HARBOTTLE:** Well, I agree with Jonathan in that  
19 sense, that I prefer --

20 **MR. READ:** Hold on a second, Dan.

21 **MR. HARBOTTLE:** I prefer the approach be restrained  
22 intellectual connection to the case as opposed to just  
23 shuttling back and forth between the rooms with dollar  
24 figures.

25 I think it's much more effective to have a legal  
26 point of view and every time it's happened in my mediations,

1 if the mediator has been asked -- has given a legal point of  
2 view, they've been careful to say, 'this is my view' and of  
3 course if I felt there was a concern they wouldn't say this,  
4 I'd make sure they did. But it's my view, it may not be the  
5 ALJ that you ultimately have your hearing before, but my view  
6 of the law is X, Y, or Z and as Jonathan says, sometimes it's  
7 preferable to have that person talking to your client, you  
8 know, in blunt terms, your own client in blunt terms.

9           So all of this is to say the training for mediators  
10 should simply be consistent and some of us are going to  
11 prefer one type of mediator, some others. But I don't think  
12 we should recommend that the mediators be told not to engage  
13 in the merits of the case as a rule.

14           **MS. WHITELEATHER:** Let me say that's not my  
15 position. My position is that -- my position is that we've  
16 had several mediators come in, and I've been doing this  
17 probably as long as most of the people in this room, and we  
18 have had a couple of mediators who have come in to parents,  
19 and I love somebody who really understands and has looked at  
20 the evidence and has some knowledge of the case to give me a  
21 studied opinion in settlement, and that's another problem  
22 because apparently OAH is doing some settlements and some  
23 mediations and those are two different types of meetings for  
24 parents, which aren't explained in the handbook.

25           But if somebody comes in my concern is when you  
26 have someone who comes in and has not gone through the

1 evidence and obviously hasn't heard testimony and makes a  
2 statement, a flat out statement, which I'm aware of, that I  
3 have good information that it happened twice. It happened to  
4 me. 'You are going to lose.' That's not a statement that an  
5 impartial mediator can make honestly. And that's all I'm  
6 asking for is impartiality.

7 **MS. SAVAGE:** And I have a comment, unless there's  
8 more in Southern California.

9 **MS. KUPERSCHMIT:** I have one comment. Ines from  
10 Learning Rights Law Center. I likewise have a concern with  
11 regard to mediators but my concern is limited more to  
12 unrepresented parents and in particular, waiver language and  
13 legal opinions given to unrepresented parents for waivers.

14 So again, I'm making a nice long list of  
15 unrepresented parent issues that I will suggest for our next  
16 meeting and I will include inasmuch as there may be people  
17 out there on the web or unrepresented parents who may have  
18 had this experience, I will be very interested in hearing  
19 what the -- what has happened out there with mediators.  
20 Because we ourselves have definitely seen some clients who  
21 have told me -- I haven't been there, because they were  
22 unrepresented, but have said things to the effect of, you  
23 know, mediators giving them absolute legal advice.

24 They're unrepresented and we're talking about  
25 parents who maybe filed on speech and language on one little  
26 issue. There's ten other issues but they only knew to file

1 on one and their mediators are pressuring them to waive all  
2 claims known, unknown, firstborn child, Section 504, you name  
3 it. And to me that would also possibly be not appropriate.

4 So we can flag it for later or if it's relevant to  
5 the rest of you I'll talk about it in context.

6 **MR. WYNER:** This is Steven. This is a complicated  
7 issue because there -- California statutes on mediation  
8 confidentiality are pretty strict. There's about four  
9 California Supreme Court cases that come down. And only  
10 under limited exceptions can anyone repeat anything that was  
11 said in a mediation.

12 So I don't know how you go about enforcing any of  
13 this, you know. It's just a strict rule. Unless you meet --  
14 you have an express, you know, statutory waiver or in  
15 writing, we can't be talking about what's going on in  
16 somebody else's mediation. Nobody's allowed to talk about  
17 it. The judges aren't allowed to talk about it, the  
18 attorneys aren't allowed to talk about it and the  
19 participants aren't allowed to talk about it.

20 So I think I'm surprised that we're talking about  
21 it this much. But I think Ines' suggestion is correct. That  
22 if a mediation is going to result in a written agreement, and  
23 you've got somebody from OAH presiding over the whole thing,  
24 one way that document could be attached -- could be attached  
25 and you could get in evidence of what happened in mediation  
26 would be to say that it was procured by undue influence or

1 fraud.

2           And, you know, I don't see how a mediator could,  
3 you know, absolutely say to somebody, and I don't have as big  
4 a problem as a lot of people do in waiving 504 claims and  
5 1983 claims. I mean you either have them or you don't.

6           But a mediator can't be sitting there or an  
7 administrative law judge can't be sitting there, I can't  
8 imagine, with an unrepresented party and telling them to  
9 waive anything other than the educational claims that OAH has  
10 jurisdiction over.

11           I mean I think it ought to go the other way. I  
12 think that if OAH is going to talk about what kind of waivers  
13 are going on they ought to look at the school district and  
14 say 'you're not entitled to anything other than to resolve  
15 the issues that have been brought.' You don't get, you know,  
16 a waiver of this, that or the other thing. There's no reason  
17 for it.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** I hear a couple of  
19 different things then I think Mr. Rosenbaum has a comment up  
20 here in --

21           **MR. ROSENBAUM:** Yes, I think what Ines and Steve  
22 are talking about again are peculiar to unrepresented parents  
23 and the difficulties if you're really going to try to reach  
24 an agreement at a mediation, and you're presented with a  
25 settlement or release, standard terms, and somebody needs a  
26 little bit of advice in terms of understanding it, that just

1 becomes problematic in itself.

2 I also disagree, Steve, that I think there are  
3 instances where otherwise required by law, the contents of  
4 both the mediation itself and any mediation agreement can be  
5 disclosed.

6 I think the other things being talked about as  
7 mediation styles. Say you've got some who are more, you  
8 know, evaluators, neutral evaluators. And others are more  
9 facilitators and that's just part of mediation style. And  
10 I'm not sure what we can impose as far as uniformity on that  
11 process. There's value in both of those techniques.

12 And what Tania is talking about is truly an  
13 aberration if it's -- I mean if it's truly conduct that's  
14 inappropriate then I think that's what the evaluation form is  
15 for. And if you can't get the form, then you can make  
16 those -- that information known otherwise to presiding ALJ  
17 and, you know, a long letter. Don't wait for the bubbles but  
18 burst something big in the moment.

19 So anyway, those are just some thoughts. In other  
20 words I think it's good to be mindful of this and probably  
21 the training should focus on some of these issues. I'm not  
22 sure that there's any rule that comes out this though, or any  
23 recommendation except what might be peculiar to unrepresented  
24 parents.

25 **MS. SAVAGE:** Kate?

26 **MS. CHILCOTE:** And that's kind of my point is that

1 there are so many unrepresented parents and when they're --  
2 somebody's proposing a waiver, a parent doesn't necessarily  
3 know what that is. And even if you explain it to them, I  
4 don't think that they understand in the moment when their  
5 child is on the line, there's a lot of things you don't  
6 understand and that you have to go research later.

7           So it is really important to remember that point of  
8 view. Because that is the reality out there. And those are  
9 the cases you're not going to hear about because they don't  
10 know to even fill out the form or to call and let you know  
11 that that's going on. Or they think they can't afford it.  
12 They're not going to call an attorney.

13           So there's so many parents out there that have a  
14 language barrier, there's so many different -- or they have  
15 learning disability themselves. And so that's where you get  
16 those unrepresented parents. It's really important to  
17 remember them in everything that we're talking about.

18           **MS. SAVAGE:** I have two comments. This is Roberta.  
19 When -- I'll agree with Tania because I've had that happen to  
20 me and I think there's not even a fine line between having a  
21 discussion with an attorney and their client about the merits  
22 of the case and just coming in with a blanket rule saying  
23 'this is the type of case you will lose.' I mean to me I  
24 think that second is inappropriate in a mediation.

25           I think the first that Steve and Dan were talking  
26 about where you're having some discussion, or at least I

1 think it was Steve, I think that's fine. But this idea that  
2 we just have -- there have been mediators and I've used the  
3 form to complain about them because they just come in with a  
4 rule. The second, there's a comment from the web which I  
5 think fits with Kate.

6 "Lawyers often use language and legal terms that  
7 cannot be understood by the average parent. An ALJ told us  
8 to look it up online and wouldn't explain what the Latin  
9 terms meant because the school district attorney objected to  
10 the ALJ translating the terms so that they could understand  
11 it. Could a rule be made or a guide for parents to  
12 understand terms used that are a foreign language?"

13 **MR. ROSENBAUM:** A Latin glossary.

14 **MS. SAVAGE:** But I think that fits really well with  
15 what Kate was talking about. If you have -- and maybe this  
16 is say for the discussion on unrepresented parents, because  
17 they may not understand what they're being asked to sign.  
18 And they're being asked to sign it.

19 **UNKNOWN FEMALE:** Is it in the handbook? Because we  
20 do that with out school district, the Community Advisory  
21 Committee. We translate what -- even the language in IEPs.  
22 And we have workshop meetings about it to try and help the  
23 parents. And, you know, if we could include that in the  
24 handbook.

25 **MR. ROSENBAUM:** What point? About?

26 **UNKNOWN FEMALE:** About translating legal terms or

1 just what a waiver is or what it could be, really simply, for  
2 parents to just realize that's a red flag. That could be a  
3 red flag that you may want to say wait a minute, I need a  
4 time out because I need to understand what this is. They  
5 don't even know to ask that question. And you're a new  
6 parent, you don't know to ask that.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** And I think this  
8 discussion is sort of overlapping to the discussion later in  
9 the agenda about training for our ALJs so if there's a  
10 recommendation that you have, Ms. Savage, or someone else  
11 based on this topic, I think we've probably covered training.  
12 If there's some further discussion we don't have to talk  
13 about it again later, I guess. But --

14 **MS. SAVAGE:** Right. And I think I would just have  
15 Ines put it on your unrepresented parent list so that we talk  
16 about it again. I don't know that there's anything to do on  
17 this. We do have one additional comment from the web before  
18 we go on.

19 "Wednesdays are half day for many schools which  
20 decreases the ability of parents to attend these meetings.  
21 Thank you for having them available on line."

22 **MR. ROSENBAUM:** I think we need Latin interpreters.

23 **MS. SAVAGE:** The next topic is pro tem use.

24 **MR. ROSENBAUM:** There's Latin again.

25 **MS. SAVAGE:** The nine judges who do our mediations  
26 and the question that I had and I repeat is, when you have --

1 when OAH has the training or even on the furlough days,  
2 because that really limits the number of days that we can be  
3 in hearing or be in mediation, if the pro tem that we are  
4 working with or gets assigned to our case can schedule it --  
5 not that it gets set automatically by OAH, but if the  
6 parties, we find that we're not in hearing on those days, can  
7 we schedule a mediation on a training day or a furlough day?

8           What I'm being told by the pro tems is they're not  
9 allowed to do anything on those days. We can't contact them,  
10 we can't communicate with them. And we certainly can't have  
11 an actual mediation. Which those days seems to be great days  
12 for all of that.

13           **MS. MCARTHUR:** Didn't we address this last time?  
14 One of the reasons we wanted --

15           **MR. ROSENBAUM:** That was pre --

16           **MS. MCARTHUR:** -- some of us to be present in the  
17 second year of the Committee is not to rehash the same thing,  
18 right? Did we not vote on it already?

19           **ADMINISTRATIVE LAW JUDGE CLARK:** But if it was  
20 expressed in the May meeting there were no recommendations.

21           **MS. SAVAGE:** And the difference is not getting --  
22 the difference from what we had talked about is to having  
23 them particularly scheduled, so I understand that OAH as a  
24 general rule does not schedule. So we don't get mediations  
25 scheduled on the training days, we don't have mediations  
26 scheduled on furlough days. But can we as parties agree with

1 the mediator who is a pro tem, who's assigned to conduct one  
2 on those days if they're available?

3 **MR. ROSENBAUM:** Is that subject to the furlough,  
4 Judge Clark? I mean is there an administrative issue there?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** I would probably  
6 have to look into that further. In terms of scheduling  
7 things when we're at training, there's so many people that  
8 would make that request, we don't typically use pro tems. We  
9 use them when we have overflow or there's a need for them.  
10 We have to assign most of our cases to regular ALJs.  
11 Scheduling people, an independent contractor on the furlough  
12 Friday, I would have to check that. So if that's your  
13 recommendation I'll certainly --

14 **MS. SAVAGE:** Yes, and on the training days, let's  
15 say we have -- it's a follow-up mediation. So where we have  
16 a mediation on one day and we need to schedule a follow-up  
17 and all the parties can agree, and then it happens to be on a  
18 training day, I would recommend that we, if that pro tem is  
19 not participating in the training that would be a great day  
20 to have our follow-up mediation. But we're being told we  
21 can't on those days.

22 **ADMINISTRATIVE LAW JUDGE CLARK:** Right. The  
23 furlough, my understanding is the furlough is no State  
24 business conducted for an office that's shut down. On those  
25 days we don't bill our time because we're furloughed. And  
26 when they're acting as independent contractors for us they're

1 supposed to abide by our rules. But that is a question that  
2 I will have to find an answer if that's your recommendation.  
3 So go ahead and make your vote if you want to and I'll look  
4 into it.

5 **MS. MCARTHUR:** But the training day wouldn't --

6 **ADMINISTRATIVE LAW JUDGE CLARK:** That would be  
7 different.

8 **MS. MCARTHUR:** Yes.

9 **ADMINISTRATIVE LAW JUDGE CLARK:** But again, you  
10 just make the recommendation and I will discuss with the  
11 other regents.

12 **MS. SAVAGE:** Is there any discussion down south on  
13 this?

14 **MR. READ:** No.

15 **MS. SAVAGE:** Okay. So I recommend that if the  
16 parties, that it's not a policy of OAH, but if the parties  
17 agree with the mediator that they're assigned who happens to  
18 be a pro tem, so a non-regular judge, that if they can agree  
19 to either a furlough day if permissible or a training day,  
20 that they be permitted to mediate on those days. Anyone  
21 second?

22 **MR. CORBIN:** Well, I have one question for Judge  
23 Clark. This is Carl Corbin. Michael, my understanding is  
24 earlier that you said that these pro tems were invited to go  
25 to the training. I would just as soon that these pro tems do  
26 get the same training and I don't want them missing the

1 training. So I have some concern with that issue.

2 **MS. BROCK:** If they're not --

3 **MS. MCARTHUR:** If they're not, she said.

4 **MR. CORBIN:** But why aren't they attending? They  
5 should be attending.

6 **MS. BROCK:** They may have already had that  
7 training.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** We invited the pro  
9 tems for trainings but it's up to them if they want to go to  
10 a mandatory training except for regular ALJs.

11 **MR. CORBIN:** Okay. Are the costs covered?

12 **ADMINISTRATIVE LAW JUDGE CLARK:** It depends.

13 **MR. ROSENBAUM:** Carl will pay the costs. I mean I  
14 agree with Carl.

15 **MS. SAVAGE:** Okay, so I made my recommendation, is  
16 there a second?

17 **MR. ROSENBAUM:** Second.

18 **MS. SAVAGE:** Okay, is there a vote up in Northern  
19 California? All in favor?

20 **MR. ROSENBAUM:** Aye. That's kind of Latin, isn't  
21 it? Old English.

22 **MS. SAVAGE:** Okay, so we have eight. All opposed?  
23 Abstain? We have one abstain. Southern California?

24 **MR. READ:** Can you repeat the motion just so that  
25 we all understand?

1           **MS. SAVAGE:** Sure. My recommendation is that if  
2 parties are working with a mediator who is not a regular  
3 judge, so pro tem, that if the parties can agree to a  
4 mediation date that happens to fall on a training day or a  
5 furlough day if permissible, that the parties be permitted to  
6 have a mediation on that day.

7           **MR. READ:** Okay, all in favor of that? Seven in  
8 favor. All against? Abstentions? One abstention.

9           **MS. SAVAGE:** Okay. I don't know if I know what the  
10 topic of calendaring process is.

11           **ADMINISTRATIVE LAW JUDGE CLARK:** I'll just take --  
12 I'll take that. That is actually -- what it is, I just  
13 wanted to talk generally about how we're scheduling matters.  
14 Just the furlough, I just wanted to remind everybody of those  
15 things.

16           And then the second thing, 5b, which is Suggestions  
17 About New Forms, I just wanted to open that up to the  
18 Committee to see if there's some types of forms you might  
19 think to propose that we have on line. Someone recommended  
20 earlier an online evaluation form for the mediation, which  
21 might be a good idea. So that's what I'm heading towards  
22 there.

23           And then the third thing I'll talk about, just FAX  
24 and Service -- Email Service of Documents.

25           So the first thing in terms of scheduling matters,  
26 because we're closed on the first three Fridays of the month,

1 everything that we would normally schedule on Friday,  
2 prehearing conferences and trial setting conferences  
3 particularly, have been moved to Wednesdays. So Monday and  
4 Wednesday are the days when the trial setting conferences if  
5 they're scheduled, prehearing conferences, and we try to  
6 avoid on Mondays setting any type of mediation because it  
7 gives our judges a day in the office to make the convening  
8 calls and the confirming calls.

9           So Monday, Thursday in a furlough week, Mondays and  
10 Wednesdays are the days that we set trial setting conferences  
11 and prehearing conferences. We ask the parties to avoid  
12 Mondays if possible, setting mediations, but if that's the  
13 day the parties agree to then we'll be setting it those days  
14 but we're not setting it ourselves typically on Mondays.

15           Then in a non-furlough week we're setting any day  
16 of the week but we're consistent with Mondays and Wednesdays  
17 are now the prehearing, trial setting conference days,  
18 avoiding mediations on Mondays. And it's turning out that  
19 even on the Friday that's in a non-furlough week that we're  
20 still avoiding setting mediations even though we can still  
21 set them on those days because the judges are available for  
22 cases.

23           So I'm going to actually try to put this on line so  
24 that it's accessible and generally speaking when people look  
25 at our calendar to see when we're available and when we're  
26 not -- that's part of what I said earlier. The online

1 updated calendar. Roberta?

2 **MS. SAVAGE:** I guess my question is why was Monday  
3 picked as a non-mediation day?

4 **ADMINISTRATIVE LAW JUDGE CLARK:** I think that's  
5 just what was developed over time. That's sort of what we  
6 went through scheduling mediations Tuesdays through Fridays  
7 and then Fridays became the furlough day. Because we  
8 anticipated at the end of fiscal year we wanted to keep that  
9 Monday as the day we typically have our meetings, our inter-  
10 office trainings if we're going to have those.

11 So the first Monday of the month is always  
12 scheduled. In the morning we have an office-wide meeting and  
13 a training if there's something available. So the first  
14 Monday of the month in the morning we wouldn't schedule  
15 anything. We wouldn't schedule any mediations that day  
16 anyway because it's the first Monday of the month. So we've  
17 just been consistent trying to keep Mondays light so that our  
18 judges are here doing their trial, making confirming and  
19 convening calls, taking care of their travel claims, that  
20 type of stuff. I mean they just need a day in the office.

21 **MS. SAVAGE:** And is there any restriction on Monday  
22 through Thursday or Monday through Friday on a non-furlough  
23 week for hearing dates? So we can't -- are there days we  
24 can't schedule hearings?

25 **ADMINISTRATIVE LAW JUDGE CLARK:** Hearing days, no.

26 **MS. SAVAGE:** Okay.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** And on a shorter  
2 week if you have a shorter hearing it's just easier to start  
3 them on a non-Monday because Mondays tend to be heavier  
4 because of trial setting conferences, prehearing conferences,  
5 that type of thing. So if you have a three-day hearing  
6 typically you can start on a Tuesday or a Wednesday, then  
7 it's just easier scheduled. But, you know, that's up to you  
8 when you're agreeing with your counsel about what days you  
9 should set the cases.

10           **MR. READ:** Judge, I have a question from the  
11 audience and it has to do with whether or not OAH takes into  
12 consideration when documents are due when scheduling  
13 prehearing conferences and mediations.

14           And this might have been a topic that we discussed  
15 at one of the meetings before but the concern is that if  
16 evidence is due before a scheduled mediation then you're  
17 wasting everyone's resources in preparing evidence and  
18 witness lists when the case may ultimately settle or having  
19 prehearing conferences so far out that, you know, you're  
20 maybe not refining the issues prior to the time that evidence  
21 or witnesses are due.

22           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, I'm not  
23 really -- I'm not sure that I understand the question.

24           Typically prehearing conferences are scheduled  
25 about a week before the hearing starts. So on the initial  
26 scheduling order I think it's five days before. So if we

1 were going to give you an initial hearing date on Monday we  
2 would schedule it the week before, five business days would  
3 be the Monday before.

4           So I'm not sure really what the question is. We  
5 typically try to have the prehearing conference closer to the  
6 actual hearing date and I'm not sure if that's not happening  
7 or what the request is. But we typically wouldn't want the  
8 parties to say 'our hearing date is November 10<sup>th</sup>, we want our  
9 prehearing conference October 15<sup>th</sup>.' We wouldn't typically  
10 set that. That would be too far in advance of the hearing  
11 date. So I guess I'm not really sure.

12           **MR. READ:** Yes, and maybe the question is more --  
13 maybe it's in two parts. Part of it is maybe the questioner  
14 had some experiences where mediation was set so far out that  
15 it was perhaps, you know, after certain items were due like  
16 evidence packets or witness lists, in which case you're  
17 exchanging these documents and preparing these documents when  
18 the case may ultimately settle and it's not a good use of any  
19 party's time.

20           And then perhaps the second part of the question  
21 is, you know, whether or not there's a reason to have a  
22 prehearing conference so close to the hearing where in fact  
23 if you can refine the issues early on that may limit many  
24 parts of the preparation.

25           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, well I guess  
26 I would turn that over to the Committee then. If there's a

1 recommendation you wanted to make.

2           In my experience, in our office's experience,  
3 having a prehearing conference closer to the hearing -- the  
4 prehearing conference is really about the hearing. It's  
5 about talking about your witnesses, narrowing your issues and  
6 focusing on the procedures and protocols you're going to  
7 follow at your hearing. So having it closer to the hearing  
8 is more helpful along those lines and a lot of the cases end  
9 up settling so having that prehearing conference closer to  
10 the hearing allows the parties the opportunity to extend  
11 their settlement discussions as well.

12           We typically, our office does not schedule a  
13 mediation between a prehearing conference and a due process  
14 hearing. We don't do that on our own. We have parties who  
15 will request to move a mediation date after the prehearing  
16 conference and we don't typically continue cases unless the  
17 parties specifically say we want to continue and there's good  
18 cause.

19           So if you have a prehearing conference on Monday --  
20 I'm just using a date, October 15<sup>th</sup> and then you say we'd like  
21 to schedule mediation for October 17<sup>th</sup>, we'll schedule it for  
22 you but that's on you that you've scheduled your mediation  
23 between your prehearing and the hearing date, not on us. So  
24 if you want to move the hearing because you want to mediate  
25 again you need to make that specific request in writing.

26           So I'm not sure if that helps your discussion as a

1 Committee to make a recommendation or a change for us, but I  
2 hope that explains at least how, you know, we see it. We  
3 don't typically schedule mediations between a prehearing  
4 conference and a hearing. Once we're getting closer to the  
5 hearing, we're gearing up for hearing and we're anticipating  
6 matters may go at some point, go to hearing.

7 **MR. READ:** We have a comment from our clients.

8 **UNKNOWN MALE:** Yes, I got a little confused here  
9 because our PHC was like ten days before. And since the  
10 exchange of binders has to happen as I recall five business  
11 days before, you'd certainly want the PHC to happen a little  
12 before the exchange of binders because some things are going  
13 to get refined in PHC and that's going to try to determine  
14 what the binders look like. So I'm not -- I'm just wondering  
15 which one I'm hearing.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, I'm not sure  
17 if there's a question for me, but we typically schedule  
18 prehearing conferences a week and I would say a week to ten  
19 days because in the past we've scheduled them on Mondays and  
20 Fridays so you could either have it the Monday before the  
21 hearing started or the Friday, you know, Monday before or the  
22 Friday before. So sometimes it's seven to ten days in  
23 advance and that's pretty standard how we've been scheduling  
24 them for quite some time now.

25 **UNKNOWN MALE:** Yes, we experienced that.

26 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

1           **UNKNOWN MALE:** And that gave us a couple of days to  
2 exchange binders after the talk with the judge. And for  
3 unrepresented parents that's important because the judge  
4 helps to refine the issues and until the issues get refined,  
5 how are you going to put your binder together? So you need a  
6 few days there.

7           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Thank you.

8           **MR. READ:** Is there any other comment?

9           **MS. KENDRICK:** This is Lisa Kendrick (phonetic)  
10 from LAUSD. The problem we've been having is that the PHCs  
11 for some reason have been getting scheduled the day after  
12 mediation which is requiring both sides to prepare for it  
13 without having gone to mediation to see if we can even settle  
14 it. And it seems to be happening more often that we're  
15 getting these dates that are so close together.

16           **ADMINISTRATIVE LAW JUDGE CLARK:** Well, I appreciate  
17 you bringing that to my attention and I'll look into how  
18 we're calendaring. But we haven't changed our calendaring  
19 system at all. So when we receive a request from a student  
20 or a parent to file a case, we consistently set cases on, you  
21 know, the certain days. We don't schedule mediations between  
22 the prehearing and the hearing date and if that's happening  
23 I'll check with our LAUSD people particularly and ask them  
24 about that. But I don't believe that's happening.

25           It happens more frequently when the parties request  
26 change in mediation date and they don't also request to

1 change their hearing or their prehearing conference date.  
2 And that sort of leaves us in a bind because we can't just  
3 continue the matters on our own. We have to have something  
4 from the parties saying we'd like you to move the dates.

5 **MS. MCARTHUR:** But, Judge, I think the question --  
6 the example that was given if I understood you correctly, is  
7 it Lisa?

8 **MS. KENDRICK:** Yes.

9 **MS. MCARTHUR:** The example was not about scheduling  
10 a mediation between PHC and hearing, but scheduling the PHC  
11 one day after mediation such that the three business day-rule  
12 when it kicks in makes us have to do the statements prior to  
13 the --

14 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, again, I  
15 can't address specifics but we don't calendar that way. So  
16 that shouldn't be the norm and that shouldn't be happening.  
17 And it concerns me that you say it's happening more  
18 frequently and maybe you can call me or talk with me after  
19 the meeting today and we can figure out what's going on with  
20 some of your cases. Because we don't typically schedule  
21 cases that way for any school district at all. It's  
22 typically all the same scheduling pattern for everybody.

23 **MS. KENDRICK:** Okay, why don't I talk with my legal  
24 team and then we'll give you a call and we can --

25 **ADMINISTRATIVE LAW JUDGE CLARK:** That sounds great.  
26 Thanks, Lisa.

1           **MS. KENDRICK:** Great, thank you.

2           **ADMINISTRATIVE LAW JUDGE CLARK:** So anybody else  
3 have any questions or concerns about scheduling? Also any  
4 suggestions for new forms that might be helpful to have  
5 online that might be helpful for the parties?

6           **MS. SAVAGE:** I think it's not -- this is Roberta.  
7 I'm not looking for a new form but in terms of information  
8 online, one of the concerns is that when you look at the  
9 calendar if you want to see if a particular school district  
10 has multiple hearings or what their calendar looks like, we  
11 can't search that from the current calendar.

12                   And is that possible so that it's -- you know, you  
13 have the case number but that each case is designated with  
14 the district that it's involved with and then in addition to  
15 that, the capability of searching that calendar to say we  
16 want to look up X school district to see if the conflict that  
17 they told us they have they actually have. Or something to  
18 that effect.

19           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. I know you  
20 made that request and I did send that request to our IT  
21 department to see. I'm not sure of the answer yet. They  
22 have yet to get back to me.

23           **MS. SAVAGE:** Okay.

24           **ADMINISTRATIVE LAW JUDGE CLARK:** But I will let you  
25 know as soon as I know an answer to that question. Mr.  
26 Rosenbaum?

1           **MR. ROSENBAUM:** Suggestion, one -- oh, sorry.  
2 Steve Rosenbaum. On the forms I'm wondering if the Request  
3 for Mediation, Mediation Only and Due Process Complaint can  
4 be made a Word document instead of PDF so it can be  
5 downloaded and then folks can type right on it.

6           The other would be, and this may be after we have a  
7 discussion as Ines is compiling the list of pro per -- sorry,  
8 that's Latin -- of unrepresented parent issues to take some  
9 of the material from the parent manual, put it into FAQs or  
10 other things on the website, other sort of bullet points that  
11 are important without recreating the manual. But this would  
12 be more long term, to think of some things that are going to  
13 be helpful for the unrepresented parents to be there maybe on  
14 the form itself or else on the website and the FAQs, to just  
15 highlight those points.

16           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Mr. Read,  
17 did you have some comments in Southern California?

18           **MR. READ:** Tania and then Steve.

19           **MS. WHITELEATHER:** When OAH first came in,  
20 districts were noted on the website, that it was indicated I  
21 believe that the district, you know, when the hearings were  
22 listed. It's really difficult, I was just adding to  
23 Roberta's comment, to find the districts and see who's  
24 involved and what is indicated I think is Department of  
25 Education, which is not involved at all in each and every  
26 hearing that's listed on the website.

1           So it's somewhat misleading because it's not the  
2 California Department of Education, of course, it's each  
3 individual educational agency. So I think it's really  
4 helpful for parents to be able to have this public  
5 information at least as to whether or not a particular agency  
6 is involved in a hearing. It's not giving out confidential  
7 information.

8           **MR. READ:** Mr. Wyner?

9           **MR. WYNER:** As for forms that should be on the OAH  
10 website, I think for unrepresented parents there ought to be  
11 several alternative settlement agreement forms that -- so  
12 they don't give away the store.

13           **UNKNOWN MALE:** That's very good.

14           **MR. ROSENBAUM:** Friendly amendment to that? Maybe  
15 that could be a place to -- what Kate was talking about  
16 earlier in terms of some of the standard release terms that  
17 are there could be explained.

18           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Any other  
19 thoughts about potential forms that might streamline the  
20 process for people?

21           I think one of the things that happens with our  
22 forms, some of the attorneys aren't using our forms. They  
23 still prepare their own declaration and their own  
24 continuance, but they don't include an order at the end. So  
25 I might get a request from the parties that I want to grant,  
26 that it looks fine to me, but they don't give me anyplace to

1 write or sign or I agree to your dates or thank you or  
2 whatever.

3 I have to re-do an order myself, type it and have  
4 it issued by my office and it would be nice if the attorneys  
5 included an order at the end of it that said, you know,  
6 here's a place for the judge to say granted, the dates are  
7 set as requested or something along those lines. It would be  
8 helpful.

9 And with that, oh, we have a number of questions.  
10 That's a long question.

11 **MS. SAVAGE:** Okay, so I think it is relevant,  
12 talking about unrepresented parents.

13 "You keep talking about unrepresented parents. Are  
14 you going to bring up my question about the whole system  
15 being unfair to begin with? No guaranteed right to counsel.  
16 As long as there is unequal access to counsel, unequal access  
17 to experts, unequal access to witnesses, unequal access to  
18 even observing our children in their Special Education  
19 programs, the system is unjust. Teachers even if they agree  
20 with parents about what is most appropriate for the education  
21 of a child rarely side with the child or parents for fear of  
22 retaliation and reassignment. They are not going to testify  
23 against parents who write their paychecks. How can parents  
24 be expected to compete against a system that is designed to  
25 be able to use endless amounts of taxpayer money to fight us.  
26 We have to spend our own money. Districts can spend as much

1 as they want to and because it is not their money they don't  
2 care. They don't care if they are spending \$50,000 of  
3 taxpayer money to deny \$15,000 worth of services to a child.  
4 It is an insane unfair system. Axe murderers are guaranteed  
5 the right to counsel yet parents of children with  
6 disabilities who are seeking school district compliance with  
7 State and Federal disability laws are not."

8 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, I appreciate  
9 that comment from the public and I thank the public for  
10 putting that information here but again, this process is  
11 about how the due process and mediation system in California  
12 is implemented. We don't write the law and we don't make the  
13 rules about who's represented, who's not. Those are  
14 questions you should take up with your legislature and the  
15 Congress. That's not something that the Office of  
16 Administrative Hearings is tasked with doing or with this  
17 Advisory Committee. So while I appreciate the concerns of  
18 the public and those comments, it really isn't something that  
19 we can address at this Committee.

20 So I wanted to move on to the final thing which is  
21 the Fax service and email service of documents. Last time we  
22 met, the Advisory Committee thought this was something that  
23 OAH should explore. So this is just really a request for  
24 information, not necessarily here today, but just a request  
25 from the Advisory Committee or any public that might have  
26 input about what that might look like.

1           If you've used a system that you think is  
2 particularly a good system for emailing your documents or FAX  
3 service, I would be interested to hear what that is and you  
4 can send me separate emails or send me a letter if you want  
5 to tell me about it. We can talk about it briefly today if  
6 you want to as well. But it is something that we want to  
7 explore and I really want to move forward with that idea.  
8 And I just wanted to get your input if you have it.

9           **MR. ROSENBAUM:** I'll comment briefly. First just a  
10 comment to the web assistee -- the person who just read that  
11 last comment. There is a movement to actually get  
12 representation in civil matters as well. I don't think it's  
13 coming to IDEA, the right to representation, but, you know,  
14 it's going beyond axe murderers now for what it's worth.

15           On the thing about forms, you know, I mean clearly  
16 the courts for some 15 plus years now have been moving  
17 towards electronic filing, fax filing. I think once the  
18 initial filing is done in any matter, the initial filing and  
19 service by traditional means, normally mailing although in  
20 some cases fax, then I think it should be up to the parties  
21 to work that out where they can meet and confer and if they  
22 need the assistance of the OAH to do that, anything to  
23 expedite and save time and costs should be done.

24           One of my colleagues commented that we're -- in one  
25 of his matters they actually were doing fax filing but he got  
26 dinged because the fax had not changed to daylight savings or

1 whatever so there was a question about when something  
2 actually got received. But putting those idiosyncrasies  
3 aside, I think it should definitely be explored and utilized.  
4 It's just important that the parties understand that and  
5 again, unrepresented parties may need more supervision from  
6 OAH before that actually goes into effect.

7 **MS. SAVAGE:** And I think we did talk about this  
8 last time, where the Ninth Circuit does use -- it's mostly E-  
9 filing or -- but there is a way that if a party doesn't have  
10 access to that, that they notify or there's a way of  
11 notification and I forget. It was more clear in May. And  
12 that, in that situation, the parties would have to do regular  
13 filing. So not faxing, not emailing. But they would have to  
14 do it by mail.

15 **ADMINISTRATIVE LAW JUDGE CLARK:** So the assumption  
16 is you would do it all by E-file and fax or email unless  
17 somebody says we don't have it. Then you have to the other  
18 way?

19 **MS. SAVAGE:** I don't recall if -- I think that  
20 might be the presumption but I think it was you had to  
21 know -- you had to say that I know this person is -- I think  
22 the party had to certify that I'm aware that both parties are  
23 E-filing or something. There was a kind of a standard form  
24 in process that the Ninth Circuit has in place so that  
25 unrepresented parents don't have to get email access via  
26 Adobe or whatever in order to file documents with them.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay.

2           **MS. BROCK:** I think we -- Tammi Brock -- I think  
3 whatever we choose that if you have a parent that doesn't  
4 have access to a computer that both sides get the documents  
5 the same way. So that a parent is not getting a document two  
6 days later that OAH is emailing to the district. And then  
7 they have no time to respond.

8           But I think, you know, we are the 21<sup>st</sup> century and  
9 we need to move towards some type of electronic filing when  
10 we possibly can. I just want it to be fair to all parties.

11           **MS. SAVAGE:** Do we have anything from down South?

12           **MR. HARBOTTLE:** I haven't had any difficulties. If  
13 there need to be special arrangements even with unrepresented  
14 parent, which is a rarity down here, we arrange, we ask them  
15 what they need and if there's a dispute over it, which there  
16 usually isn't, we arrange something that works for everybody.  
17 I don't think there's -- we have -- I don't know if anybody  
18 else in the room has had real problems but there's been no  
19 real difficulty with service.

20           **MS. BROCK:** Well, what the practice has been in the  
21 past, and I don't know if it's the same way now, is that a  
22 parent would automatically get it by mail rather than, you  
23 know, an email even if they have email and fax available to  
24 them. So all I'm saying is that if they do have that  
25 available and everyone's -- the other party's getting it by  
26 email. We should all get it the same way.

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Okay. Should we  
2 move on to the next agenda item?

3           **MS. KUPERSCHMIT:** Just a procedural issue. A  
4 little rewind. And only because I'm taking notes, I know  
5 that there are some recommendations about new forms. I  
6 didn't know if that was something we were going to vote on or  
7 do we have to vote on them? Because we voted on every other  
8 recommendation and those recommendations were just kind of  
9 made. So -- I can vote aye for all of them.

10           **MR. ROSENBAUM:** I vote that Ines just put that the  
11 vote was approved. If it carries any more weight, I would  
12 say that minor suggestions I made -- I mean I think you heard  
13 them, Judge Clark, the recommendation, but if it carries more  
14 weight to have the Committee behind it then I would ask that  
15 it be in the form of a motion that the complaint mediation  
16 form be made a Word document and that some of the key parent-  
17 friendly points be written into the FAQs and placed elsewhere  
18 on the website in appropriate places and that's a more long  
19 term effort.

20           **UNKNOWN FEMALE:** I'll second it.

21           **MS. KUPERSCHMIT:** There are other recommendations  
22 here. There was one recommendation about -- I believe this  
23 was from Steve Wyner, putting on line a few examples of  
24 settlement forms.

25           **MR. ROSENBAUM:** Oh, yes. I'll add that to my  
26 motion.

1           **MS. KUPERSCHMIT:** And then there was a request from  
2 Judge Clark about putting an order at the end of motions.

3           **MR. ROSENBAUM:** Right. Would that go as a form?

4           **ADMINISTRATIVE LAW JUDGE CLARK:** Again it was just  
5 a statement I guess by me.

6           **MR. ROSENBAUM:** You could always sanction parties  
7 who don't -- then you'll have money to pay the pro tems to  
8 attend the conference and pay for lunch. For the record  
9 these are chips.

10           **MS. SAVAGE:** Do we have a second on the posting of  
11 examples of settlements for unrepresented parents?

12           **UNKNOWN FEMALE:** I'll second.

13           **MS. SAVAGE:** Okay, so we've got three, complaint  
14 mediation form in Word, FAQs and examples of settlements. Do  
15 we want to do a vote on all three at one time or are we going  
16 to do them separately?

17           **MS. MCARTHUR:** What if you have a different opinion  
18 on one of the items?

19           **MS. SAVAGE:** Oh, okay, so we're going to do them  
20 all separate. Starting with the complaint mediation form.  
21 Northern California, all in favor of having them in Word  
22 form? Unanimous except for the one who's not here. So  
23 eight. Down south?

24           **MR. READ:** All right, having in Word form  
25 complaints? All in favor? Unanimous.

1           **MS. SAVAGE:** Okay. Having FAQs separate and apart  
2 from the parent manual that highlights important points, is  
3 that the best way of saying it?

4           **MR. ROSENBAUM:** Yes. And those can be woven into  
5 the existing FAQs.

6           **UNKNOWN FEMALE:** Like bulleting points for  
7 unrepresented parents that they need to focus on that are  
8 already in the manual. That's how I understood it.

9           **MR. ROSENBAUM:** Sure. That would be one way.

10          **MS. SAVAGE:** Okay. All in favor? Unanimous.  
11 Southern California?

12          **MR. READ:** It looks like it's unanimous as well.

13          **MS. SAVAGE:** Okay. And the final one, having  
14 examples on line of standard settlement release language.  
15 All in favor in Northern California? One, two, three, four,  
16 five. Five. Opposed? One, two, three.

17          **MS. MCARTHUR:** I'm going to abstain.

18          **MS. SAVAGE:** Abstain. Two opposed, one abstain.  
19 Down south?

20          **MR. READ:** All right, all in favor? Three in  
21 favor. Opposed? Four opposed. Abstention? One abstention.

22          **MR. ROSENBAUM:** What about modified form about the  
23 orders? The order must be included on requests or motions.  
24 Parties that have served motions.

25          **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, it's not

1 really a motion.

2 **MR. ROSENBAUM:** You don't need an Advisory vote.

3 **MS. SAVAGE:** I think the problem that we're faced  
4 with right now is it's 1:30 and we're supposed to be done at  
5 2:00 and we have two heavy agenda items and we need to get to  
6 public comments so we have to decide what we want to do.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** I think we can  
8 just move on. Mine was just more of a comment, you don't  
9 need to vote on that.

10 **MS. SAVAGE:** Right, but I think if we have to  
11 decide, do we want to stop and push these two agenda items  
12 for next meeting and give public time to comment or what do  
13 we want to do?

14 **MR. ROSENBAUM:** Comment. Well, to the extent that  
15 we've been doing sort of rolling public comments if they come  
16 up, I think we could cut into some of that time. But if  
17 there's other items that we need to move or we move the  
18 clock.

19 **MS. SAVAGE:** I know that there are people who told  
20 me they have to leave at 2:00. So I don't think --

21 (Overlapping voices)

22 **MS. SAVAGE:** And I have reserved three public  
23 comments from the web that we need to get in.

24 **MS. MCARTHUR:** Why don't we do the public comment.  
25 It's terribly important.

26 **MR. ROSENBAUM:** Yes. Yes.

1           **MS. MCARTHUR:** Then when comments are over we can  
2 explore that.

3           **ADMINISTRATIVE LAW JUDGE CLARK:** We have to talk  
4 about dates for the next meeting as well.

5           **MR. ROSENBAUM:** Right. Why don't we take those two  
6 items first?

7           **MS. SAVAGE:** We have to find out -- what do you  
8 guys think down south? How do you want to proceed?

9           **MR. READ:** I didn't understand your suggestion.  
10 We're on number six on the agenda.

11           **MS. SAVAGE:** Right. And we have a half hour left.

12           **MR. READ:** Right. And so what's your suggestion?

13           **MS. SAVAGE:** Eliza suggested that we jump to public  
14 comment and we get through public comment and then if we get  
15 back, if we have enough time, that we have enough time for  
16 six and seven. Otherwise we deal with it next time.

17           **MR. READ:** All right. It seems like we've already  
18 discussed agenda item six in other sections.

19           **MS. SAVAGE:** Yes. But we focused on the closing.

20           **MR. READ:** We focused on the closing.

21           **MR. ROSENBAUM:** This is law and motion, yes.

22           **MR. READ:** Well, I'm -- all right, how do folks  
23 feel about going right to public comment right now? Wyner  
24 approves.

25           **MS. SAVAGE:** Was that an approval?

1           **ADMINISTRATIVE LAW JUDGE CLARK:** Let's just go  
2 ahead and go to public comment. And we'll start in Southern  
3 California. If there's anybody in the audience in Southern  
4 California that wants to make a public comment at this point,  
5 this would be your time to come forward. And if there's  
6 anybody on the web that has comments and want to email those  
7 in as well, this would be the time as well.

8           **MS. WHITELEATHER:** Mine is just a -- Tania  
9 Whiteleather, mine is a question. It's an issue that I  
10 raised to my colleagues on this side of the bar and that I  
11 have had two problems with. And so I'm asking for  
12 clarification from OAH for its position regarding subpoena  
13 duces tecum for prehearing production of documents. Because  
14 this is -- this happened in two different cases where a  
15 district has come and presented a subpoena duces tecum for  
16 prehearing production of documents. And in one case in fact  
17 we had an ALJ order prehearing production of documents. So  
18 I'm just trying to learn what the position of OAH is.

19           **ADMINISTRATIVE LAW JUDGE CLARK:** I'm not prepared  
20 to really address that at this point. I'm not sure that we  
21 have a position. If you're asking for a position it could be  
22 case by case so if you have concerns you can certainly bring  
23 them to me. You can write a letter or call me and I'll be  
24 happy to talk to you about the concerns on specific cases.  
25 But there's no specific policy that I'm aware of that I would  
26 talk about at this point so.

1           **MS. WHITELEATHER:** Right. It had always been the  
2 policy of SEHO, the predecessor to OAH, that there really is  
3 no discovery and I think that's what the statutes say. In  
4 due process hearings there's no discovery process. Parents  
5 have a right to educational records under 56504 and related  
6 Federal case codes.

7           But for there to be discovery and production of  
8 documents I think is something that's not in California  
9 Education Code regarding due process hearings. Yet I have  
10 seen this personally in two hearings. I've heard of it from  
11 other practitioners in the field. And so I'm just trying to  
12 understand the policy.

13           If in fact in the one case where the judge ordered  
14 the documents to be produced I then prepared an SDT for  
15 documents the student had not received and was denied,  
16 which -- so I'm just trying to understand. And I can lay  
17 this out but I really need to understand the policy and  
18 procedural practice.

19           **MS. SAVAGE:** So you're talking about, Tania, you're  
20 talking about a request prior to a witness appearing and the  
21 request not being, 'bring your documents to the hearing' but  
22 'send me your documents 30 days before the hearing.'

23           **MS. WHITELEATHER:** It wasn't 30 days but yes.

24           **MS. SAVAGE:** Okay.

25           **MS. WHITELEATHER:** Prior to. Not bring to the  
26 hearing, produce documents to the hearing. In that case it

1 wasn't even -- there was no issue of medical or disagreement  
2 with medical records, his whole problem.

3 But I just -- before I go anywhere I really need to  
4 understand. And it may be something that if I communicate  
5 with the presiding judge on further, I'm glad to do that but  
6 it's something that I do need to understand and I know that  
7 there are other folks in my position who've had similar SDTs  
8 from school districts saying we need your documents ahead of  
9 time.

10 **MR. WYNER:** Could I just add a query to that? What  
11 if you don't? What if you don't produce? Suppose OAH issues  
12 an order for you to produce, you know, ten days before  
13 hearing and you ignore it. What are they going to do?

14 **MS. WHITELEATHER:** I think -- well --

15 **MR. WYNER:** They have no enforcement power over a  
16 subpoena duces tecum.

17 **MS. WHITELEATHER:** What I find is if we don't do  
18 whatever ordered to do we're uncooperative and that's another  
19 little hitch against the student or the parent.

20 **MR. WYNER:** They were uncooperative in not issuing  
21 your requested ---

22 **MS. WHITELEATHER:** And the second case --

23 **ADMINISTRATIVE LAW JUDGE CLARK:** And again I want  
24 to keep this focused. The (inaudible) aspect of the law is  
25 really not what this Committee is about. I appreciate what  
26 Ms. Whiteleather comments. I will -- I took notes on them.

1 I'll follow up with you and please call me at your  
2 convenience and we'll discuss this further and maybe I can  
3 look into the specific cases you're talking about.

4 **MS. SAVAGE:** I do want to add there was a comment  
5 from the web that was on a similar topic and I think it was  
6 what Tania was talking about when she made the request.

7 And there's a comment that "when requesting  
8 student's file it should include the entire file, anything on  
9 a student including emails from personnel regarding the  
10 child."

11 So that could be consistent with having to make a  
12 request for an SDT because they're not being given that  
13 information, you know, when they make the request and if a  
14 parent is forced to make a request for an SDT just for  
15 educational records that they should have gotten before.

16 **MR. ROSENBAUM:** Could we be sure to come back to  
17 this at the next -- I think it's important even to know if  
18 OAH is saying there is no position on it or it's up to each  
19 judge or I think it's an important issue that we want to just  
20 track it at the next meeting and maybe have some more  
21 discussion about it. This STD, not the other STDs. No one  
22 is in favor of the other STDs.

23 **MS. SAVAGE:** Does that work for down south?

24 **MR. READ:** Yes.

25 **MR. WYNER:** Yes.

26 (Overlapping voices)

1           **MS. SAVAGE:** So I have two other comments. I'll  
2 start.

3            "In reading OAH ALJ's decision it seems they're  
4 unclear about a child's right to be fully included with  
5 children who are not disabled and quite often they believe  
6 school districts when they argue that the children are not  
7 'ready' in quotes for inclusion. Inclusion is supposed to be  
8 the default placement and children are not supposed to be  
9 removed from general education unless it is proved that they  
10 can't be educated in the general education environment. If  
11 districts have never tried to include these children with  
12 supports and accommodations they need, how can they rule that  
13 segregating them in Special Ed only classes is the least  
14 restrictive environment."

15           And I know I had someone asking me to put on the  
16 agenda a similar issue about the least restrictive  
17 environment and does OAH have a current position on how they  
18 are making that determination and if so, what is that?

19           **MS. MCARTHUR:** I have an answer for you here, it's  
20 called Holland. We're entering into substantive territory  
21 that I think is completely inappropriate for this --

22           **MS. SAVAGE:** And I'm not sure I agree. I think it  
23 goes to an issue that we probably are not going to get to, is  
24 some of the training for the judges and making sure that, you  
25 know, we can all say it's the Holland standard, but is  
26 that --

1           **MS. MCARTHUR:** It's a different question.

2           **MS. SAVAGE:** Is it -- right, and I think that this  
3 is -- I think this potential topic goes into the issue of  
4 training and are the judges properly trained on what the  
5 factors are and what it means?

6           **MS. MCARTHUR:** Well, I think the question of  
7 whether someone is properly trained right there presupposes  
8 all kinds of positions. On any one case there are generally  
9 two different positions on how to apply Holland and how it  
10 should be interpreted. So I don't think that's the correct  
11 question. The question is whether they're trained on LRE, on  
12 the progeny of cases, and who the training is provided by and  
13 whether we need more training for people who provide it?

14           **MS. SAVAGE:** Thank you for clarifying it. That's a  
15 good question.

16           **MR. ROSENBAUM:** And it's Rachel H.

17           **MS. SAVAGE:** Right. So I guess -- so can't we get  
18 an answer to Eliza's version of my question?

19                           (Overlapping voices)

20           **ADMINISTRATIVE LAW JUDGE CLARK:** I don't know the  
21 answer to your question. This Committee is not about -- and  
22 I'm not going to answer questions about substantive law.

23                           We receive training. We receive training on LRE.  
24 We're open to suggestions about trainings and if you have  
25 suggestions about the trainings then you should go ahead and  
26 make those recommendations and we will include those in the

1 training if they're appropriate. And that's about all I can  
2 really say about that specific issue.

3 **MS. SAVAGE:** But isn't it also appropriate for us  
4 to get from OAH who has already provided the training on LRE,  
5 and so what do the current judges -- so not just what's going  
6 to happen in the future, but what over the last four years  
7 has gone one.

8 **ADMINISTRATIVE LAW JUDGE CLARK:** And our training  
9 records are available upon request. So the judges who've  
10 received training in a particular area, you can request that  
11 information and we will provide it.

12 **MS. SAVAGE:** Okay.

13 **UNKNOWN FEMALE:** And how do you request that  
14 information?

15 **ADMINISTRATIVE LAW JUDGE CLARK:** In our User Guide  
16 there's ways to make that request. It explains it in our  
17 User Guide or you can write a letter to our office requesting  
18 it.

19 **UNKNOWN FEMALE:** Okay.

20 **MS. SAVAGE:** Yes?

21 **MR. WYNER:** Can't we get that scanned and put up on  
22 the website so you don't have to reproduce it a lot of times?

23 **UNKNOWN FEMALE:** Very simple. And it would be  
24 helpful for parents.

25 **MS. BROCK:** And I did a public records request to  
26 try to get an ALJ's training and I didn't get it until after

1 a hearing because it took forever and a day. So I think it's  
2 something that should be available on the website. But can  
3 we go to the trainings, too, to see what kind of training  
4 they're getting?

5 **ADMINISTRATIVE LAW JUDGE CLARK:** The trainings are  
6 typically not open to the public.

7 **UNKNOWN FEMALE:** Why not?

8 **MR. WYNER:** For the same reason that the LRP  
9 trainings for school district attorneys aren't open to parent  
10 attorneys.

11 (Overlapping voices)

12 **MS. MCARTHUR:** Thank you, Steven. We can have  
13 fairness even in representation.

14 **MS. BROCK:** But these are supposed to be trainings  
15 for the ALJs which are both sides. So --

16 **MR. ROSENBAUM:** They need to have candor and  
17 conversation and --

18 **MS. BROCK:** Okay.

19 **MS. MCARTHUR:** And also I think -- I would like to  
20 add one more thing. And that is I'm not sure really what  
21 we're talking about. I mean, what does it mean to train an  
22 ALJ on the meaning of a particular case? For God's sake,  
23 they're attorneys. You know, we hope that before they pick  
24 up this job that they know how to interpret case law and look  
25 at precedent and so on and so forth. So we're more talking  
26 about different people's views or takes on a particular case

1 than really training on the law. That's kind of a  
2 problematic term in and of itself for me.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** This is the public  
4 comment portion so let's go back there. Any further public  
5 comment --

6 **MS. SAVAGE:** Yes.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** -- in Southern  
8 California?

9 **MS. SAVAGE:** Oh. Let's go to --

10 **MR. READ:** We have a comment.

11 **MR. ATWOOD:** I'm still Peter Atwood. I'm going  
12 back to Judge Clark's remark earlier that, in response to all  
13 of the very unlevel playing field kind of things we face,  
14 that OAH can't do anything about that. The legislature and  
15 Congress do and that's perfectly correct.

16 And that's why it seems to me all the more  
17 important that OAH shouldn't add to our yoke by being  
18 prejudiced against us in various ways that OAH doesn't have  
19 to be. Now I'll give you a for instance. And Tania can  
20 start too when I'm done about exactly the same thing.

21 I subpoenaed a whole bunch of records, which I was  
22 certainly entitled to under FERPA. The district lawyer came  
23 up with all sorts of nonsense. He came up with, for example,  
24 (inaudible) he filed saying, if it's not in the file cabinet  
25 it's not a FERPA record. So I went, you know, looked around,  
26 and demolished all of that stuff and so the judge having seen

1 that it was all demolished did not refer to that but he still  
2 found a way not to let me have the records. He said OAH  
3 doesn't have any jurisdiction concerning FERPA. (Inaudible).

4 The thing is why is OAH so determined not to  
5 enforce the law concerning educational records? Why can't  
6 you just play it straight? We're not even asking a favor,  
7 it's just -- play it straight. Give us the records the FERPA  
8 and the California Ed Code say. And from a public policy  
9 standpoint this is very important. All kinds of bad things  
10 happen because they know they can hide the records and OAH  
11 isn't going to make them cough up the records. And so a lot  
12 of cases wouldn't happen if the districts knew in the first  
13 place that the law would actually be enforced and they would  
14 actually have to cough up the records.

15 My kid hasn't had any school now for three years  
16 because of what they did to him. You know, the reason that  
17 happened is because they did stuff they figured would never  
18 see the light of day. If they had known what they did to  
19 this kid was going to see the light of day they would have  
20 never done it and I wouldn't be sitting here talking about  
21 these things. He'd be in high school.

22 So from a public policy standpoint, actually  
23 enforcing the law, just giving us the records like FERPA  
24 says, would save a lot of money, would save a lot of injury,  
25 would keep a lot of cases from having to be tried.

26 Another point is the credibility of witnesses. Now

1 district witnesses we've already said are subject to the  
2 danger of all kinds of retaliation. Parent witnesses aren't.  
3 Now everybody knows that the way human nature works is that  
4 the witness who is in danger of retaliation is not as  
5 credible as the witness that is not. And it seems that OAH  
6 is the only entity in the world that is unaware of this fact  
7 of human nature.

8           And (inaudible) -- I'm reminded here of Meredith v  
9 University of Mississippi in '62 when the Circuit Court said,  
10 what the world knows the Court knows. You know, if they  
11 said, oh, you know, we don't keep black people out of here,  
12 look. And the Fourth Circuit overruled it. It's ridiculous  
13 decision of the Federal district judge who said, what the  
14 world knows, the Court knows.

15           And what the whole world knows about district  
16 witnesses and their credibility and the way they're going  
17 talk when they're looking at the district lawyer and they're  
18 looking at their bosses and they're looking at how things are  
19 and how people get reassigned and how parent witnesses are  
20 going to talk, what's the parent going to do? All right?

21           Don't buy the Fourth Circuit's judgment of human  
22 nature. We already know, you know, what the world knows, you  
23 know. (Inaudible).

24           **MS. SAVAGE:** I think there's a couple of comments  
25 that are consistent with that that have come in.

26           There's one, "If we know that parents are at a

1 disadvantage then why does OAH continue to make the burden on  
2 the parents?"

3 Another one is, "Ever since OAH took over due  
4 process hearings from the McGeorge School of Law something  
5 like 95 per cent of cases are ruled in favor of school  
6 districts and not parents. When McGeorge did this it was  
7 more even, about fifty-fifty. How do you explain this  
8 obvious unfairness?"

9 A couple of other comments that are not in that  
10 same vein, "Are all ALJs lawyers? I heard that you didn't  
11 even have to have a law degree to be an ALJ." And then he  
12 seemed to not know the law. And it's my understanding that  
13 they do have to be attorneys.

14 **ADMINISTRATIVE LAW JUDGE CLARK:** They're all  
15 attorneys.

16 **MS. SAVAGE:** Okay. A comment about the trainings  
17 when I think Tammi had -- Tamara Brock had asked if they were  
18 open. This public comment is, "School district trainings are  
19 open to the public. Most trainings that are publicly funded  
20 are open unless there is a specific reason for not."

21 I have two other public comments unless there's --  
22 two other from the web.

23 I was asked to re-read the one about the  
24 disadvantage that I read earlier, that "We keep talking about  
25 unrepresented parents. Are you going to bring up my question  
26 about the whole system being unfair to begin with? No

1 guaranteed right to counsel. As long as there is unequal  
2 access to counsel, unequal access to experts, unequal access  
3 to witnesses, unequal access to even observing our children  
4 in their Special Education programs, the system is unjust.  
5 Teachers even if they agree with parents about what is most  
6 appropriate for the education of a child rarely side with the  
7 child or parent for fear of retaliation and reassignment.  
8 They are not going to testify against people who write their  
9 paychecks. How can parents be expected to compete against a  
10 system that is designed to be able to use endless amounts of  
11 taxpayer money to fight us? We have to spend our own money.  
12 Districts can spend as much as they want to. Because it is  
13 not their money they don't care. They don't care they are  
14 spending \$50,000 of taxpayer money to deny \$15,000 worth of  
15 services to a child. It is an insane and unfair system. Axe  
16 murderers are guaranteed the right to counsel yet no parents  
17 of children with disabilities who are seeking school district  
18 compliance with State and Federal disability laws are not."

19 I think I read the wrong comment, I'm sorry.

20 **MR. ROSENBAUM:** Yes, we heard that.

21 **MS. SAVAGE:** I will get back to that one. It's a  
22 tough task. I did get --

23 **MR. WYNER:** Can we respond to any of these?

24 **MS. SAVAGE:** Sure.

25 **MR. WYNER:** Okay.

26 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, in what

1 respect, Mr. Wyner? It's a public comment really at this  
2 point. It's not -- we're not here to debate the merits or  
3 non-merits of her positions but go ahead if you have a brief  
4 comment.

5 **MS. SAVAGE:** Did you have a comment, Steve?

6 **MR. WYNER:** I think that comments that -- the  
7 comment that you just read is something that everybody needs  
8 to consider and take seriously and the answer is -- I mean,  
9 I've done this for probably 15-plus years now. And although  
10 the system is designed to allow parents to represent  
11 themselves and Pete Wright's out there educating people as to  
12 how they can represent themselves, the fact of the matter is  
13 this law is as complicated as anti-trust law, as tax law, and  
14 I don't think you, a parent would do that by themselves.

15 And so in order to win, you have to be realistic  
16 and understand that you're going to need a really good case  
17 and a really good lawyer. And if that's not acceptable to  
18 you, then Judge Clark is right, you need to talk to your  
19 legislators about how to change the law.

20 I mean parents can't get reimbursed for expert  
21 witnesses, not because OAH says so, but because the United  
22 States Supreme Court says so. So you've got to change the  
23 law if you want something different.

24 **MR. ROSENBAUM:** And the burden of proof.

25 **MR. WYNER:** Yes, the burden of proof. I mean  
26 that's just what the -- that is the nature of this country.

1 It's not because OAH has decided to be mean to parents.

2 **ADMINISTRATIVE LAW JUDGE CLARK:** Ms. Savage, you  
3 have a few more comments.

4 **MS. SAVAGE:** I do. "I have to agree with  
5 retaliation. My daughter only had one year of school since  
6 2004 after our due process case. I re-enrolled this year in  
7 August and so far the district will not put her in a class."  
8 August 2009 is when she re-enrolled.

9 I did find the comment and I apologize for  
10 repeating the wrong one. This is the one that was asked to  
11 be repeated. "Lawyers often use Latin and legal terms that  
12 cannot be understood by the average parent. An ALJ told us  
13 to look it up online and wouldn't explain the Latin term."  
14 Oh, see, "because the school district attorney objected to  
15 the ALJ translating the term so I could understand. Could a  
16 rule be made or a guide for parents to understand the terms  
17 used that are a foreign language." Maybe that's something we  
18 could put in FAQs. Some basic terms.

19 The final, final, the final public comment that I  
20 have so far, this is a person who couldn't attend and sent  
21 this in advance it appears.

22 "I would like OAH to make a decision regarding the  
23 parent's rights to tape record the resolution session that  
24 has to be held unless the school district and parent agree to  
25 waive the resolution meeting before a fair hearing can be  
26 heard. Our SELPA than handles ten school districts refuses

1 to waive the resolution and knows that the parents want to  
2 tape record and say that if a parent tape records a  
3 resolution meeting then they are refusing to hold a  
4 resolution meeting and threatens the parents that they will  
5 not be allowed to continue with their due process hearing.  
6 It states in writing under Notice of Procedural Safeguards,  
7 quote, 'Prior to filing for a due process hearing the school  
8 districts shall be provided the opportunity to resolve the  
9 matter by convening a resolution session which is a meeting  
10 between the parents and relevant members of the IEP team who  
11 have specific knowledge of the facts identified in the due  
12 process hearing request,' unquote. If you can give 24 hours  
13 notice to tape record an IEP, why can't the parents give 24-  
14 hours notice to tape record the resolution session? Why do  
15 parents have to be threatened that their due process hearing  
16 will be dismissed if they tape the resolution session? This  
17 is an ongoing problem in our SELPA that handles ten school  
18 districts. I have emailed the judges and OAH refuses to make  
19 decisions on this issue. This is what is happening to  
20 parents that are unrepresented. Can you explain how OAH can  
21 say they don't have the right to make a decision regarding  
22 the right for parents to tape record the resolution session?"

23 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, any other  
24 web comments at this point? Any public comment from  
25 Sacramento? Anyone? We've lost our audience here as well.  
26 Okay, at this point I think --

1           **MS. SAVAGE:** Anything else from Southern  
2 California?

3           **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, I'm sorry.  
4 Go ahead.

5           **UNKNOWN FEMALE:** I have a question on the last  
6 comment that you just read. Is it possible to put that on an  
7 agenda item to be discussed further?

8           **MS. SAVAGE:** That's what I was thinking. I think  
9 that's probably a good idea.

10          **MR. ROSENBAUM:** The tape recording of resolution  
11 sessions or --

12          **UNKNOWN FEMALE:** Yes.

13          **MS. SAVAGE:** Well, I -- and I think the issue -- I  
14 think the issue that it raises is if a parent's requesting to  
15 tape record it and the district refuses to let that occur,  
16 record it, what effect would that have on whether the  
17 district could then file a motion to dismiss the case because  
18 the parent's not participating in the resolution session.

19          **MS. BROCK:** Is it required that a parent  
20 participate in a resolution session in order to have a  
21 hearing go on?

22          **MS. SAVAGE:** Unless --

23          **MR. ROSENBAUM:** Well, why don't we put it on as an  
24 agenda item, you know, the whole -- everything surrounding  
25 this.

1           **MS. SAVAGE:** I think it should go for next time.

2           **ADMINISTRATIVE LAW JUDGE CLARK:** We have one  
3 more -- we have a comment in Sacramento.

4           **UNKNOWN MALE:** A comment about the public comment  
5 is that when somebody makes a statement as a public comment  
6 such as percentage of cases won by parents and so on, if  
7 unrefuted it sometimes is believed to be true. I know as  
8 part of -- part of the Advisory Committee it's a public  
9 comment.

10                   It doesn't -- we don't respond to it. We don't say  
11 it's accurate. We don't say it's inaccurate, it's not  
12 accurate. Hopefully people aren't, in the public who listen  
13 to this, won't take that as accurate information based on  
14 (inaudible).

15           **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you.

16           **MR. ROSENBAUM:** Can I say one more thing about  
17 public -- could I ask that next time the public, the people,  
18 just like members of the audience, identify themselves, that  
19 people on line do the same? I mean --

20           **MR. WYNER:** I just made that comment.

21           **MR. ROSENBAUM:** You did? Because I think it's  
22 helpful for somebody -- for commenters and it's just helpful  
23 to get a sense of the sentiment but it's clearly a lot of  
24 anger and distrust for what it's worth. It would be helpful  
25 to know somebody about numbers or people's or, you know, to  
26 identify themselves.

1                   **ADMINISTRATIVE LAW JUDGE CLARK:** I appreciate all  
2 the public input and the people who attended the meeting in  
3 both locations. I appreciate your comments and even though  
4 as the audience here and Kent said, we don't respond, we  
5 don't necessarily agree with the comments. They're just  
6 public comments. They're taken at face value for that  
7 reason.

8                   We appreciate the input of the public and also the  
9 time and effort of the Advisory Committee to help us make  
10 this a better process. That's why OAH is here and has this  
11 Committee so that we can continue to improve access for all  
12 parents and students and districts and improve the way that  
13 we handle the due process and the mediations here in  
14 California for Special Education cases so I appreciate you  
15 taking the time to attend today and also for your web  
16 comments as well. So thank you for that.

17                   We need to pick a new date for the hearing. It's  
18 complicated by the fact that we have to pick rooms that have  
19 access to the internet so what I want to do is give you  
20 proposed three dates for the next Advisory Committee meeting  
21 which probably should be done in the first two to three weeks  
22 of April probably -- early to mid April. And then we'll go  
23 from there and I'll check to make sure we have rooms  
24 available that our system can access and we'll pick the days  
25 based on that.

26                   So I'm proposing the week of April 5<sup>th</sup>, so the 6<sup>th</sup>,

1 7<sup>th</sup>, 8<sup>th</sup> -- or 8<sup>th</sup>, or the week of the 19<sup>th</sup> if you want to do it  
2 on a Friday but I don't know if you want to do it on a  
3 Friday. So the first group is April 5<sup>th</sup> through the 8<sup>th</sup> are  
4 Monday through Thursday. Those are non-furlough days. April  
5 5<sup>th</sup> is the first Monday so it wouldn't be a good day to have  
6 it then. Or April 12<sup>th</sup> through the 15<sup>th</sup>. And then the 19<sup>th</sup>  
7 through the 23<sup>rd</sup> would be the other week that would be  
8 potentially available. So I would propose Tuesday, April 13<sup>th</sup>  
9 as the date, the first date, and then maybe Thursday, April  
10 15<sup>th</sup> as the second date.

11 **MR. ROSENBAUM:** That sounds good to me.

12 **MS. SAVAGE:** I think there was comment -- public  
13 comment about Wednesdays being a particularly good day  
14 because there was some half day scheduling for school  
15 districts and parents could participate on line.

16 **ADMINISTRATIVE LAW JUDGE CLARK:** Did they say it  
17 was a good day or a bad day?

18 **UNKNOWN FEMALE:** They were glad it was on line  
19 because it was a bad day.

20 **MS. SAVAGE:** I think it can be -- I think there  
21 were --

22 **ADMINISTRATIVE LAW JUDGE CLARK:** You could take it  
23 either way.

24 **MS. SAVAGE:** I think you can take it either way.  
25 It gave them time to participate.

26 **ADMINISTRATIVE LAW JUDGE CLARK:** Well, we can look

1 at all three of those dates, April 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup>.

2 **MR. ROSENBAUM:** The 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup>, yes.

3 **ADMINISTRATIVE LAW JUDGE CLARK:** Does anybody have  
4 any disagreement with one of those three dates?

5 **MR. CORBIN:** We just set this April 14<sup>th</sup> -- this is  
6 Carl Corbin -- that would actually not be a good day for me.  
7 The Tuesday or Thursday would be good but again, whatever  
8 needs to be done.

9 (Overlapping voices)

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Okay, hearing no  
11 disagreement other than Mr. Corbin, I will research the 13<sup>th</sup>,  
12 14<sup>th</sup>, and 15<sup>th</sup> as potential dates.

13 (Overlapping voices)

14 **MR. WYNER:** I'm trying -- I just want to point out  
15 that those three days are the most stressful in most  
16 American's lives.

17 **UNKNOWN FEMALE:** Oh, yes, tax day.

18 **MR. ROSENBAUM:** Take that up with Congress, Steve.

19 **ADMINISTRATIVE LAW JUDGE CLARK:** April 20<sup>th</sup>, 21<sup>st</sup> or  
20 22<sup>nd</sup>? How -- anybody?

21 **MR. WYNER:** Any of those.

22 (Overlapping voices)

23 **ADMINISTRATIVE LAW JUDGE CLARK:** I will check those  
24 dates and make sure we have a room down in Los Angeles and  
25 this meeting should be in the Oakland area for the next  
26 meeting.

1 (Overlapping voices)

2 **ADMINISTRATIVE LAW JUDGE CLARK:** So with that we  
3 are adjourned. I'm sorry, Mr. Varma? Judge Varma, sorry.

4 **ADMINISTRATIVE LAW JUDGE VARMA:** The individual  
5 that commented on Wednesdays -- it is a bad day. They don't  
6 want it on those days so they can attend in person.

7 **ADMINISTRATIVE LAW JUDGE CLARK:** Wednesdays are bad  
8 days.

9 (Overlapping voices)

10 **ADMINISTRATIVE LAW JUDGE CLARK:** Thank you again  
11 everybody for being here.

12 (Overlapping voices)

13 **ADMINISTRATIVE LAW JUDGE CLARK:** I'm sorry, there's  
14 a comment from Southern California. Did somebody have a  
15 question?

16 **MS. SAVAGE:** Yes, hold on.

17 **MR. READ:** I want to make sure we have -- we'll be  
18 developing an agenda for next time. We've got certain  
19 requests that have been made today. I just want to make sure  
20 that those are forwarded. Is it our note-takers that are  
21 going to forward the minutes to everyone and then we'll  
22 forward those for agenda items?

23 **ADMINISTRATIVE LAW JUDGE CLARK:** Yes, that would be  
24 my understanding. There's a note-taker in Los Angeles and  
25 there's a note-taker in Sacramento, that the Committee should  
26 reconcile their notes at some point and then make written

1 suggestions and I will respond in writing to those as well or  
2 the office will.

3 **MR. READ:** Okay.

4 **ADMINISTRATIVE LAW JUDGE CLARK:** And in terms of  
5 the recommended or suggested agenda items, I will put out a  
6 request again for agenda items. You should make your request  
7 and then I'll review it the same way that we've done it in  
8 the past with the presiding judges for what's an appropriate  
9 agenda item and what's not. So keep that in mind when you're  
10 making those recommendations. Thank you everybody.

11 Thereupon, the meeting  
12 was adjourned.)

13 --oOo--

14 \* \* \* \* \*

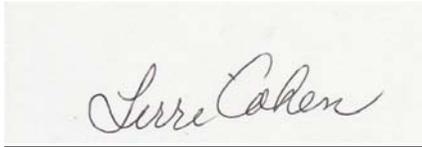
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CERTIFICATE OF TRANSCRIPT

This is to certify that I, Terri Cohen, transcribed the digitally-recorded public meeting of the Special Education Advisory Committee dated October 21, 2009; that the pages numbered 1 through 174 constitute said transcript; that the same is a complete and accurate transcription of the aforesaid to the best of my ability.

A rectangular area containing a handwritten signature in cursive script that reads "Terri Cohen".

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Terri Cohen  
April 11, 2010  
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