

OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

SPECIAL EDUCATION ADVISORY COMMITTEE MEETING

OCTOBER 26, 2010
10:00 A.M. - 1:00 P.M.

JOINT SESSION

LOS ANGELES, CALIFORNIA
SACRAMENTO, CALIFORNIA

Official Transcriber: Stacy Wegner

COMMITTEE MEMBERS PRESENT :**NORTHERN CALIFORNIA**

MARGARET BROUSSARD
DORA DOME
FRAN ENGLISH
THOMAS GIBSON
CHRISTIAN KNOX
SUSIE MALLOY
KENT REZOWALLI
KATIE RUSSELL

SOUTHERN CALIFORNIA

MARGARET DALTON
ANN DELFOSSE
PAUL EISENBERG
MAUREEN GRAVES
DAN HARBOTTLE
MIHO MURAI
CHRISTINE SMITH
CONSTANCE TAYLOR
ROBERT WRIGHT

COMMITTEE MEMBERS NOT PRESENT :

KATE CHILCOTE

ALSO PRESENT :

JUDGE JUDITH KOPEK, Administrative Law Judge
JUDGE ANN F. MACMURRAY
JUDGE BOB VARMA
JUDGE TIM NEWLOVE

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P R O C E E D I N G S

1
2 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. I
3 would like to welcome everybody to the first meeting of the
4 2010 -- 2010/2011 OAH Special Education Advisory Committee.
5 This meeting is being held via video conference between the
6 Sacramento Office of the Special Education Division and at
7 the Los Angeles State Building. It is also being
8 simultaneously webcast, and we welcome all of our web users.

9 I'm Judith Kopek, and I am assigned as the
10 Administrative Law Judge for the Special Education Division.
11 I was previously the presiding administrative law judge for
12 the Sacramento Special Education Office of OAH. And
13 unfortunately for us, Richard Clark, who was the previous
14 division presiding administrative law judge, recently took an
15 appointment as a federal administrative law judge for the
16 U.S. Department of Labor, and we certainly wish him much
17 success, and I appreciate his leadership and only hope that I
18 can continue where he has left off.

19 It's a pleasure for me to work with this Advisory
20 Committee, and I look forward to our continuing efforts to
21 continue to improve the special education division's
22 processes, both in terms of the (inaudible) and due process
23 hearings.

24 Joining me in Los Angeles are Presiding
25 Administrative Law Judge Ann Macmurray from the Van Nuys

1 office, as well as Tim Newlove, Presiding Administrative Law
2 Judge from the Laguna Hills office. And here in Sacramento
3 we have -- Acting Presiding Administrative Law Judge Bob
4 Varma for the Sacramento office.

5 I think what I'd like to do is read both the
6 mission and the goals for the Advisory Committee because I
7 think this provides the framework in which we have operated,
8 and it focuses on -- us on the -- the issues and topics for
9 us to discuss today.

10 "The Advisory Committee is a Committee comprised of
11 parents, attorneys, advocates, school employees and other
12 stakeholders, the majority of whom are parents and advocates
13 or attorneys for parents. The Advisory Committee provides
14 non-binding recommendations to OAH to improve the mediation
15 and due process procedures utilized by OAH."

16 And the goals are, "That OAH consultants with the
17 Advisory Committee in areas such as revisions to the OAH
18 website, documents, scheduling procedures, staff training,
19 training materials, parent procedure manual, consumer
20 brochure, outreach to families and students, proposed
21 provisions to laws and rules in order to improve the delivery
22 of fair and neutral services for dispute resolutions."

23 Before we get started into the substance of the
24 meeting, I want to thank some of the many people that have
25 helped put this meeting together. Kay Stubbings and Laura

1 Gutierrez from our Sacramento office were very helpful in
2 terms of the logistical planning. And Elizabeth Gransee and
3 folk from the DGS Public Affairs are helping us with the
4 webcast.

5 At this point, since this is a new group, what I'd
6 like is to have us go around and have each of you introduce
7 yourselves and just provide your affiliation in terms of your
8 primary connection to special education and the work on the
9 Advisory Committee, whether you're a parent and advocate, and
10 then also whether you're a new member to the Committee or
11 whether you are a returning member.

12 And let's start in Northern California with Ms.
13 Dome.

14 **MS. DOME:** My name is Ms. Dora Dome. I am an
15 attorney for Dannis Woliver & Kelley, and I represent the
16 school districts.

17 **MR. GIBSON:** My name is Tom Gibson. I am a parent
18 of a special education student, and I also am a partner in a
19 law firm that represents school districts.

20 **MS. BROUSSARD:** I'm Margaret Broussard. I am a
21 parents' attorney.

22 **MS. KNOX:** Christian Knox from Ruderman and Knox,
23 and I am a parents' attorney.

24 **MS. ENGLISH:** Fran English, and I'm parent of a
25 child with autism and also program supervisor for special ed

1 in San Ramon.

2 **MS. MALLOY:** Susie Malloy, parent, new member.

3 **MR. REZOWALLI:** My name is Kent Rezowalli. I'm a
4 parent of a disabled child, but I'm here as facility director
5 of the Tri-valley SELPA. I'm also the senior Director of
6 Special Education for Pleasanton Unified School District.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And
8 starting in Southern California?

9 **MS. TAYLOR:** I'm Constance Taylor, an attorney
10 representing school districts with Atkinson, Andelson, and
11 I'm a returning member.

12 **MR. HARBOTTLE:** My name is Dan Harbottle. I'm an
13 attorney for school districts. Also a returning member.

14 **MS. DALTON:** I'm Margaret Dalton. I'm (inaudible)
15 in the Education and Law Clinic at USD representing parents,
16 and I'm a new member.

17 **MR. EISENBERG:** My name is Paul Eisenberg. I'm an
18 educational advocate. I'm also a parent to a child with a
19 developmental disability who's now since graduated high
20 school and gone on to college, and I'm also a new member.

21 **MS. DELFOSSE:** I'm Ann Delfosse. I'm a SELPA
22 Director from West Orange County, and I am a new member.

23 **MS. GRAVES:** I'm Maureen Graves. I'm a parent with
24 18 year-old twins with autism, and a parent/student side
25 special education lawyer and one of the co chairs of CAPCA,

1 California Association for Parent-Child Advocacy, and I'm
2 new.

3 **MS. MURAI:** Hi. I'm Miho Murai, and I'm a parent
4 attorney, and I'm a new member.

5 **MR. WRIGHT:** I'm Bob Wright. I'm a parent, and I
6 have a son who is PD and is severely dyslexic from San Diego.

7 **MS. SMITH:** Hi. I'm Christine Smith. I'm a new
8 member. I'm a special ed director. I'm representing East
9 San Gabriel Valley SELPA.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Terrific.
11 The first thing that we need to do is -- I think it's been
12 helpful to have both a chair and a note taker in each
13 location.

14 So starting in Northern California, do we have any
15 volunteers? I see Ms. Dome has been nominated.

16 **MS. DOME:** I guess I'll chair.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** You'll chair the
18 meeting. All right. And as a note taker.

19 **UNKNOWN FEMALE:** Margaret --

20 (Inaudible - - due to simultaneous colloquy.)

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Can we
22 -- we'll have both of those through acclimation of the
23 Committee.

24 And how about in Southern California?

25 **MR. HARBOTTLE:** I'll do either one.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** And I'm sorry.
2 That was could you identify yourself?

3 **MR. HARBOTTLE:** That's Dan Harbottle. I'm sorry.

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Sorry. All
5 right. And you'll be the chair?

6 **MR. HARBOTTLE:** That's fine.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** And how about the
8 note taker?

9 **MS. SMITH:** I'll take notes. Christine Smith.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you,
11 both.

12 **UNKNOWN FEMALE:** Sorry. I think that this is the
13 microphone. I think it should be centrally located and if
14 you -- that button is for mute.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

16 **UNKNOWN MALE:** Oh, I got control here.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'd like the
18 chairs in each location are -- have been helpful to
19 facilitate the discussion, and I will do -- try to also
20 assist in terms of keeping us on schedule and moving through
21 the agenda.

22 I have a few updates and announcements and -- of
23 information that I'd like to provide to the Committee, and
24 then we can begin to move through the more substantive
25 portion of the agenda. It has worked well in the past to

1 take comments and questions from the public on each topic as
2 they come in, as necessary, and -- and try to respond to all
3 of those. And then in addition, there will be an opportunity
4 for public comments at the end of the agenda items, and it is
5 requested that those public comments be directed towards
6 items that have not been discussed otherwise in the agenda
7 today. Okay.

8 First item of basic information is just to indicate
9 there had been a question in the past meeting concerning the
10 Open Meeting Act and it's applicability to these meetings.
11 Each member was given or was made available coming into the
12 session a copy of the Bagley-Keene Open Meeting Act, which
13 does govern these meetings. The Advisory Committee has
14 operated consistent with the requirement to the Open Meeting
15 Act, but we wanted to provide the requirements of the Act to
16 each of the members in case you had any questions and for
17 your information.

18 We will go through and discuss each of the items on
19 the agenda. The meeting can continue to be fairly informal
20 as it has been. The process has worked well where members of
21 the Committee have presented recommendations on different
22 items, and then there has been discussion and then a vote at
23 the end of the meeting. Notes have been prepared by the
24 Committee and provided to OAH, and then OAH has responded in
25 writing to each of the recommendations of the Committee. And

1 I think that procedure has worked well, and I would like to
2 continue with it at -- at this time.

3 As we have done in the past, when there are votes
4 on various recommendations, you need to identify in terms of
5 the various members by name, in terms of who's voted for,
6 who's voted against each of the recommendations. Again, this
7 is something that we have always been something that we've
8 always been doing, but I just want to continue that practice.
9 Okay.

10 Any questions or comments about --

11 **MR. HARBOTTLE:** Just a couple.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes.

13 **MR. HARBOTTLE:** How -- how close were we Roberts
14 Rules of Order in terms of motions and seconds and all that?

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, there's no
16 requirement that you follow Roberts Rules of Order. So I
17 think my -- I think the purpose of the Committee is obviously
18 to provide information, a forum where we can have good
19 discussion. I think it is helpful in terms of my and OAH's
20 ability to respond. That we have a clear statement of what
21 various recommendations are, and we have a vote yes or no in
22 terms of those recommendations and move on. But I don't
23 think we need strictly, you know, a motion and -- you know,
24 and end of discussions and what not.

25 So I think -- again, informally we've had motions

1 be presented, and then they have been seconded just to
2 indicate that there is enough interest to discuss the motion,
3 and then at the end of the discussion, you know, we then have
4 a vote. So I think -- I mean, I -- to me, as long as we keep
5 consistent within that structure, I think that has worked
6 rather effectively for us.

7 **MR. HARBOTTLE:** Part of my comments -- I'll be the
8 note taker who might have take first, second and --

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right.

10 **MR. HARBOTTLE:** -- write out a motion as opposed to
11 (inaudible). Yeah. Thank you.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Similarly with
13 meeting minutes, there's no requirement that we take minutes.
14 Under certain circumstances in terms of closed session, which
15 has never occurred here, there is a specific requirement. So
16 just generally -- I think it's just helpful for information
17 sharing.

18 So again, if the -- if the note takers need us to
19 slow down or clarify, please let us know, but I think if
20 we're all cognizant of those ground rules, I think we'll do
21 fine. Anything else?

22 **UNKNOWN FEMALE:** What is the purpose of the notes?

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** The purpose of the
24 notes is to -- at least for me, to have a record of what has
25 been discussed.

1 **UNKNOWN FEMALE:** Okay.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** And certainly to
3 communicate to OAH what specific recommendations are coming
4 out of the Committee, because those are then reviewed, and
5 then we provide a written response to each of those
6 recommendations.

7 Anything else? Okay.

8 The next item is a mention of staffing changes. As
9 I indicated at the beginning, Richard has left, and I have
10 taken over his position as the division PJ. Administrative
11 Law Judge Bob Varma has stepped in to serve as the Acting
12 Presiding Administrative Law Judge in the Sacramento office.
13 And in May we hired Michael Barth as a new administrative law
14 judge in the Sacramento office, and he is now fully trained
15 in both mediation and hearings, and he out conducting both
16 mediations and hearings.

17 To follow up on the Laguna Hills Office closure, as
18 I believe was indicated in the last meeting, as of the end of
19 December the physical Laguna Hills Office will be closed.
20 The plan is, I believe, by mid-December to actually vacate
21 the premises.

22 Two of the administrative law judges from the
23 office have been relocated to San Diego. That's Susan Ruff
24 and Darrell Lepkowsky. Tim Newlove remains a presiding
25 administrative law judge, and at least for the time being,

1 we're still referring to that group of people as the lag
2 hills judges.

3 And Judges Judith Pasewark and Robert Helfand and
4 Presiding Judge Tim Newlove are basically out -- sort of a --
5 participating in a telework pilot project, so they will each
6 be primarily teleworking out of their home with full
7 capabilities in terms of video conferencing and all the rest.
8 And they will be taking their assignments and conduct it --
9 you know, handling case assignments as -- as they regularly
10 did.

11 We continue to calendar the judges on a statewide
12 basis. So I know that there had been some concern as to
13 whether this change would mean any -- lack of staffing for
14 the Orange County and as far as Southern California areas,
15 and we do not anticipate a problem.

16 We are still sort of looking or keeping an eye out
17 for potential hearing room locations in Orange County areas,
18 as necessary, but in terms of the budget and the -- sort of
19 the usage of the Laguna Hills office in terms of special ed
20 matters, we don't have any firm plans to have a fixed hearing
21 location as of -- as of yet.

22 So Tim, I don't know if you have anything that
23 you'd like to add?

24 **MR. NEWLOVE:** You've covered it. When I was with
25 the Attorney General's Office we had hearings all over Orange

1 County, including at the federal building. (inaudible) Santa
2 Ana and the -- special ed hearings could be held at these
3 locations, except if there's a need for a phone for out-of-
4 state or out-of-court witnesses.

5 So there's a -- there's a -- the parties can get
6 creative and find hearing rooms around Orange County if they
7 want, other than the school district sites.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right. And so
9 certainly on a case-by-case basis, either in terms of
10 mediations or hearings, if there are specific needs in terms
11 of hearing room locations -- and obviously, that would be
12 addressed by either bringing it up initially to the -- to
13 Tim, as the presiding judge, or certainly with the assigned
14 trial judge at the prehearing conference or before to -- to
15 arrange for any locations. Okay.

16 **MS. GRAVES:** I have a question.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure.

18 **MS. GRAVES:** This is Maureen Graves. Would OAH be
19 finding a place for hearings in Orange County if the parents
20 wished to have a hearing not at the school district location
21 or -- I mean, that would -- I assume that OAH would be paying
22 if there were a cost, but would OAH be doing the leg work of
23 checking with federal courts as to whether rooms would be
24 available and so on?

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, what we have

1 done -- or Tim, I -- do you want to respond or --

2 **MR. NEWLOVE:** Yeah.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** What I can say is
4 -- is based on -- what we've done in the past is we've worked
5 with the parties to see what was available. And to be
6 honest, I don't -- you know, to be honest, I don't know -- my
7 understanding is that we -- between either school district
8 locations or OAH locations we were able to find a location
9 suitable to -- to the parties, and particularly the parents.

10 **MS. GRAVES:** Right. I don't think that's been a
11 problem with OAH having locations, but if OAH doesn't have
12 locations it does become a problem, and I think -- you know,
13 I only recently have had the opportunity of having hearings
14 in some place other than a school district (inaudible). It's
15 not -- it's a burden that parent lawyer (inaudible) a lot
16 fewer connections than a entity like OAH.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** I certainly
18 understand that, and what I can say -- I mean, we will
19 continue on a case-by-case basis to do what needs to be done
20 to reach a -- you know, to identify and locate a suitable --
21 suitable location. Anything else? Okay.

22 The next item is the Advisory Committee terms of
23 office. And with this group of members of the advisory --
24 Advisory Committee, we're basically staggering terms of
25 membership. So that for those of you that are continuing,

1 your membership will continue through this year, so this
2 meeting and then the next scheduled meeting, which will most
3 likely be in April. And then if you wish to continue, you
4 would then reapply in May.

5 For those of you that are just newly appointed to
6 the Committee, you are now beginning basically a two-year
7 term, so that you can continue through this year and through
8 the next year, should you desire to do so, without need to
9 reapply. And so hopefully, that will begin a process by
10 which we will continue to have some continuity from year to
11 year and also allow opportunities for new individuals to join
12 the Committee. Okay.

13 Some of you may have seen that we do have a new OAH
14 website. This was recently launched in connection with a
15 total redesign and relaunch with our parent agency, the
16 Department of General Services.

17 I certainly encourage any feedback or comments that
18 you may have. We have already received some comments aimed
19 at increasing the accessibility to certain users of certain
20 aspects of the website, and we are following up on those to
21 see how we might be able to implement those suggestions.

22 The idea was to provide a website that minimizes
23 the number of clicks or links that you need to use and that
24 most of the comment information is readily available and
25 accessible, and I can't remember whether the protocol was two

1 clicks or three clicks, but they really did try to design it
2 so that almost from every -- anywhere you start in that site
3 that you'd be able to get to where you need to go with the
4 minimum of navigational difficulties.

5 So hopefully -- and like I said, any concerns or
6 issues or suggestions for improvement, you can either send
7 them to me or we can talk about them at -- at the next agenda
8 item at the next meeting.

9 Any comments on that?

10 **MS. GRAVES:** I -- this is Maureen Graves again.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Uh-huh.

12 **MS. GRAVES:** I think I've heard a lot of
13 frustration and have experienced some in trying to use it.
14 It just seems like it wasn't wrote for most people's points
15 of view. We were used to it, and now it doesn't seem
16 reliable.

17 I did a search yesterday, and I thought I got the
18 answer, and then it turned out that when I typed "special"
19 into the decisions database I also got that there were no
20 cases including the word "special."

21 I'm just finding it very unreliable and a time
22 waster, and I don't know what to do about it, but I think
23 there's been a lot of frustration on the LISTSERV that I'm
24 on.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** And Ms. Graves is

1 that specifically to do with the decision and order database
2 or other aspects?

3 **MS. GRAVES:** Well, it's different things at
4 different times. I mean, it seem -- when I was looking for
5 reports of OAH for this meeting, I got to it one way and I
6 couldn't open it. And then somebody else told me she could,
7 so I tried again, and I got to it another way where it was
8 fine. It just seems that it's inconsistent and difficult.

9 And most of the time the order thing seems to work
10 fine but then sometimes it doesn't. And what was most
11 frightening yesterday was I thought I got the answer. I
12 looked up a name and it wasn't there, and I thought that
13 meant something, and then it turned out that it meant it
14 wasn't working.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I -- I know
16 that there have been glitches with the new -- some glitches.
17 I think the best thing to do is -- if you are having those
18 types of concerns -- is there is a way that you can send in
19 your comments so that we -- we know or certainly to -- to
20 call and let us know, and then we can follow up to see what
21 the -- you know, whether -- to make us aware of the problem
22 and then see what needs to be done to fix it.

23 Has there been any other concerns or problems with
24 the website? Has this occurred recently, Ms. Graves, or --

25 **MS. GRAVES:** This was yesterday, and I thought

1 things were getting better, but yesterday this problem
2 happened.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Actually, I
4 have a -- an email address that you can use to send in any
5 feedback or problems that you have with the website, and it
6 is dgsfeedback, all one work, @dgs.ca.gov. And let me repeat
7 that again, dgsfeedback, all one work, @dgs.ca.gov.

8 And certainly any issues you have, I think if you
9 do send them in that's the best way for us to be made aware
10 of them and then to be able to -- to fix them. Okay. All
11 right.

12 The next item is updated OAH forms that are
13 available online. There are a number of new forms that are
14 available. There is a special education scheduling guide
15 that is a one-page calendar that easily identifies what
16 specific days of the week and times.

17 Various things are scheduled by us, including
18 hearings, which are Monday to Thursday with a 1:00 p.m. start
19 on Monday, unless otherwise ordered by the administrative law
20 judge. PHCs, prehearing conferences, are scheduled Monday
21 and Wednesday at 10:00 a.m. and 1:30 p.m. Mediations are
22 Tuesday through Thursday, generally 9:30 to 4:30, except for
23 Los Angeles Unified School District, and LAUSD has two
24 sessions a day. The morning is 9:30 to 12:30 and the
25 afternoon from 1:30 to 5:00. And then trial setting

1 conferences or status conferences, which we use extremely
2 rarely, are to be scheduled on Wednesday between 9:30 to
3 12:00 and 1:30 to 4:00.

4 And all of this information is given in a calendar
5 type format, and it's hopefully very helpful so that you know
6 what the parameters are in terms of scheduling.

7 We have two new forms regarding transcripts. One
8 specifies a new rate system that allows for different per
9 page cost, depending upon how quickly you want the
10 transcript, which allows for regular transcript processing of
11 30 to 45 days. And then we have three sort of expedited
12 rates of anywhere from 15 to 30 days to two to seven days,
13 and obviously, the -- the faster you want your transcript,
14 the page price goes up. And in connection with that, there
15 is a new revised transcript and -- or administrative record
16 request form.

17 We also have a notice of resolution session
18 outcome, which is used by the districts to let us know of --
19 of the -- the holding of a resolution session and what the
20 outcome was, whether the matter has been resolved or whether
21 the matter continues to -- to move on towards hearing.

22 There is a form to -- that could be used to request
23 to dismiss or withdraw a complaint, where you just fill it
24 out and check the box and send that in. And also there's a
25 revised request for continuance form that's on the website.

1 All the forms are available in English. Some of
2 them are available in Spanish, and we are in the process of
3 getting them translated into the other five commonly used
4 languages in California school districts. So as those become
5 available, I'll be able to give you an update, and hopefully
6 at our next meeting. Yeah?

7 **MR. REZOWALLI:** Kent Rezowalli. The forms for
8 resolution session, are those sent -- could those be sent or
9 have those been sent with the notice of filings, the dates of
10 mediations and hearings? How does the district get those
11 forms?

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm not sure --

13 **MR. REZOWALLI:** How would a district access those
14 forms other than the website, knowing to go on the website,
15 for resolution?

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** To get the forms
17 to complete?

18 **MR. REZOWALLI:** How would a district -- you said
19 it's online now?

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right.

21 **MR. REZOWALLI:** Is that how the district would get
22 that form, online, or is this sent to the districts during --
23 somewhere during the process?

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's a good
25 question.

1 **UNKNOWN FEMALE:** The another question, I think --

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. The
3 information we have is that we believe it's only online.

4 **UNKNOWN FEMALE:** I guess the dilemma in that is how
5 will the districts know that that's something that we're
6 supposed to do? I mean, is it something sent out to the
7 district (inaudible).

8 **UNKNOWN MALE:** (Inaudible) comment on the
9 resolution form.

10 **UNKNOWN FEMALE:** We do receive the resolution form
11 with the notice for the -- with the initial notice and
12 scheduling order.

13 **MR. HARBOTTLE:** Did you hear that, Your Honor?

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** No. Can you
15 repeat it again?

16 **MR. HARBOTTLE:** We had a representative from
17 (inaudible) SELPA that indicates that they are getting the
18 form in connection with the -- with the initial paperwork
19 from OAH.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, okay. Good.
21 Okay.

22 **MS. GRAVES:** Does the form say anyplace that
23 whenever anything is submitted to OAH a copy needs to be sent
24 to the parent or the parent lawyer? Because I know sometimes
25 there may be disagreements about what's happened with the

1 resolution process, and I wouldn't want a form going in that
2 parent lawyers and parents don't get a copy of.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Well, do
4 you want to make that as a recommendation?

5 **MS. GRAVES:** Yes.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And what is
7 the recommendation?

8 **MS. GRAVES:** That the form indicate that it must be
9 sent to the parent or parent representative, as well as to
10 OAH to no -- the notification of outcome of resolution
11 session.

12 **UNKNOWN FEMALE:** I actually have a comment.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Let's see if we
14 can -- do we have a second on this recommendation?

15 **MS. DALTON:** I'll second it.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Who seconded it?

17 **MS. DALTON:** Margaret Dalton.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right.

19 **MS. DALTON:** Unless -- is it --

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Discussion?

21 **MS. DALTON:** I actually have a question, albeit a
22 discussion too. If the form requires a signature from the
23 district and the parent attorney, it does not -- okay. Then
24 I'm seconding it.

25 **MS. BROUSSARD:** I have a comment. I'm Margaret

1 Broussard. It seems to me that that form shouldn't just be
2 something the districts fill out. I am unclear on why a
3 parent attorney could also not -- or a parent couldn't fill
4 that out as well, because sometimes there are -- I would
5 imagine that there were times that a district might not want
6 to notice OAH that there hasn't been a resolution because it
7 would move up the dates. So I don't understand why that
8 would be a select form only for districts. Why couldn't
9 either side fill it out?

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's -- so that
11 sounds actually as though it would -- is it another
12 recommendation?

13 **MS. DALTON:** I would say I am -- yes.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** So could we have
15 discussion on just the one recommendation first?

16 **MS. DALTON:** If it --

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Or are we now
18 revising or modifying the recommendation?

19 **UNKNOWN FEMALE:** (Inaudible).

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait a minute.

21 **MS. DALTON:** Well, my guess -- I would be either
22 recommending it to be -- if it -- the recommendation as it
23 stands is that it would get sent to parents as well, but if --
24 -- if -- if it were affirmed for either, then -- then the
25 recommendation, in my mind, would then be that it gets sent

1 to the opposing party.

2 So -- so I guess I'm recommending a modification of
3 the recommendation that either party could fill it out, and
4 then it would have to be sent to the opposing party.

5 **MS. GRAVES:** That's friendly.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** So Ms. Graves, do
7 you agree to that change?

8 **MS. GRAVES:** Yes.

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Can we have
10 someone restate what the amended recommendation is? Ms.
11 Graves?

12 **MS. GRAVES:** I guess that both sides would receive
13 a notice of result of resolution session, and either side,
14 which turns it in, needs to submit it to the opposing party.
15 And I guess -- I guess I would say that it's the district's
16 responsibility to submit it, unless otherwise agreed, so that
17 you know somebody is going to submit it, assuming that OAH
18 wants to be getting them.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is that clear to
20 you?

21 **UNKNOWN FEMALE:** Both sides receive notice of
22 result of resolution session. Either side could fill it out
23 but district would have primary responsibility unless
24 otherwise agreed?

25 **MS. GRAVES:** Right. And any notice -- any

1 communication with OAH needs to be copied to the other side.

2 **UNKNOWN FEMALE:** I have a question. Is this
3 currently a requirement of the district to feel these out?

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Hold on --
5 hold on one minute.

6 **UNKNOWN FEMALE:** I don't understand the form.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** What's -- I want
8 to make clear what we now have as the recommendation, as
9 amended from Ms. Graves. And is there a second to the
10 amended recommendation? Okay. Ms. Broussard has seconded
11 it.

12 Now, is there -- what was the question? In terms
13 of whether this is currently required; is that correct?

14 **UNKNOWN FEMALE:** Yes.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

16 **MS. MACMURRAY:** If I could make a statement? This
17 is Ann Macmurray. My recall when this form was implemented
18 was that it was a requirement of CDE of us as part of our
19 statistical reporting. I mean, I think the districts have an
20 obligation to report it anyway, but CDE put it on OAH to go
21 ahead and then collect this information for statistical
22 purposes. I think the form is a yes or no --

23 **MR. HARBOTTLE:** Yeah.

24 **MS. MACMURRAY:** -- (inaudible) yes or no kind of
25 check box. It is not used for any other purpose. It doesn't

1 advance the dates. We don't take it as a waiver of
2 resolution session or anything. If something like that
3 happens, the parties have to agree to that in writing and
4 provide it to us, so I don't know if that helps clarify.

5 **UNKNOWN FEMALE:** Yes. Thank you.

6 **UNKNOWN FEMALE:** Well, and I'm sorry. I have to
7 interject because it's my understanding that the law requires
8 that the district convene a resolution session --

9 **UNKNOWN FEMALE:** Right.

10 **UNKNOWN FEMALE:** -- within 30 days of a parent
11 filing a complaint, so that's why I believe OAH is sending
12 the form to the district to see if the district has met its
13 requirement. It may be coming as part of the initial packet
14 of forms with the complaint, but I have also seen it come
15 from OAH as a separate document at some point after the
16 notice of hearing.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And -- and
18 to basically reinforce what Judge Macmurray has indicated, it
19 is -- this form was developed at the request of CDE because
20 the -- the -- they are being required to provide some
21 information concerning resolution sessions, so we agreed to
22 ask the districts to fill out this form and provide the
23 information. The form does go out with the scheduling order.

24 And then if a district does not file -- submit any
25 information concerning the resolution session, we have been

1 sending out a follow-up letter to the district to remind them
2 to give us some indication as to the resolution session. So
3 the purpose of the form was basically to provide some
4 information and data to the -- to CDE that they need to then
5 provide to the -- to the Feds. So that just gives you some
6 background as to what -- what -- where this form came from
7 and what the purpose of it is.

8 But we now have a recommendation from -- a proposed
9 recommendation concerning both sides should be permitted, as
10 I understand it, to complete the form and to submit it to
11 OAH, with the burden being -- or the requirement being on the
12 district to do so, but anything that is sent to OAH has to be
13 sent to the other party. Okay.

14 Do we have any further discussion on that issue --
15 on that recommendation? Okay. We ready for -- I'm sorry.

16 **MS. ENGLISH:** Fran English.

17 **MR. HARBOTTLE:** I have one thing.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Wait a minute.

19 Ms. English?

20 **MR. HARBOTTLE:** Go ahead.

21 **MS. ENGLISH:** I think it's redundant of both
22 parties to fill it out. I think the district should be
23 responsible. I mean, we fill them out anyways. So to send
24 it to the parent too -- I guess, for informational purposes,
25 possibly -- but I don't see a reason --

1 **UNKNOWN FEMALE:** Well, I --

2 **MS. ENGLISH:** -- for their attorney and -- or the
3 parents to fill it out again, unless OAH wants extra
4 paperwork. It seems --

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** I think there was
6 someone in Southern California?

7 **MR. HARBOTTLE:** Yes. Yes. Dan Harbottle. I'm
8 looking at the form online, and it really is nothing more
9 than yes to the question -- yes or no to the question, "Was
10 the session held?" Yes or no to the question, "Was the
11 matter resolved?" And yes or no to the third possible
12 question, "Did the parties jointly waive the resolution
13 session?"

14 I think I concur with the comment from Ms. English
15 that it's just going to be redundant. You're going to get
16 double the number of paper -- pieces of paper, and it's all
17 objective, straightforward information that has no -- there's
18 no opportunity for the parties to give any substantive gloss
19 on what happened, other than it either happened or not,
20 settled or not, and if it didn't settle or it didn't happen,
21 whether that was because of a waiver.

22 I think this is probably more -- I don't think we
23 need -- I mean, the parents can obviously make their position
24 known, but I think we are probably going to just end up with
25 precisely the same paperwork twice.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** I believe Mr.
2 Gibson here in Sacramento?

3 **MR. GIBSON:** Yeah. This is more of a process
4 question, and maybe this bears on why we seem to be sort of
5 feeling the way through the issues. It's not really on the
6 agenda, so I'm just sort of raising that as a process
7 consideration.

8 If we're following Bagley-Keene, it's just a
9 general updated forms online agenda item. It's nothing that
10 we need to make a recommendation on. Maybe it should come at
11 the next meeting when it's on the agenda, and people would be
12 familiar with the form, what it is. I mean, if this is going
13 to resolve itself and go away, I think that's fine, but if
14 it's going to turn into a recommendation, then maybe it ought
15 to be on the agenda and something that people are ready to
16 discuss.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So you're
18 suggesting that we -- that there be --

19 **MR. GIBSON:** I mean, if they're still interested in
20 pursuing it based on hearing what the form actually says -- I
21 mean, maybe it's a non-issue and there can just be a general
22 concurrence that it's a good idea to copy the other side when
23 you send things to OAH, but if it's -- if there's desire to
24 pursue it to a formal recommendation, then I would suggest it
25 be an actual agendized item before we do that.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** I guess that is
2 now another recommendation that this matter be deferred until
3 it's noticed on the agenda and that there be further
4 discussion. Is that right?

5 **MR. GIBSON:** Yes.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. Mr.
7 Rezowalli?

8 **MR. REZOWALLI:** Yes. This is a -- sort of have a -
9 - sort of piling recommendations on each other without going
10 in order. I think that's something we -- we -- we do
11 occasionally. And this agenda is different than I'm used to,
12 which has action items and information items and such.
13 There's not a clear understanding what you're going to be
14 voting on or not or just informational type of items, so
15 there's a little bit of lack of clarity with that.

16 It's -- I think -- I think the process would be if
17 we have a recommendation -- if somebody would like to
18 withdraw their recommendation, we go ahead with another
19 recommendation, but I think we ought to, in terms of process,
20 deal with them one at a time, and if -- until we decide what
21 we're voting on and not voting on, I think we should
22 (inaudible). And perhaps hearing what was just said, maybe
23 somebody would like to withdraw that for a later date.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Actually, I -- I
25 like that suggestion in terms of going forward.

1 So what we currently have is we were discussing Ms.
2 Graves's amended recommendation. Is there any further
3 discussion on that issue?

4 **UNKNOWN FEMALE:** I think that it is a bit
5 disingenuous to say that this piece of paper only denotes a
6 paperwork requirement for CDE, because there is a statute on
7 point that says that OAH should be notified if the resolution
8 session does not result in a resolution and the dates get
9 moved up automatically upon that notification.

10 So I'm a little concerned that this notification
11 would go in, but it doesn't for anything, because it seems to
12 me that then we'd have to do a second notice that counted on
13 the same issue.

14 So I do think that this piece of paper matters, and
15 I do think -- I -- I happen to know that I've never ever seen
16 a district send it in, or at least I've never gotten copied
17 that it's been sent in. And in most cases, if it -- if it
18 doesn't resolve in that 15 days, it requires the hearing
19 dates to move up, and I never get the a notice that the
20 hearing dates are moving up, unless I've sent in a notice to
21 do so based on the resolution session not completing.

22 So I do think this piece of paper has -- has value
23 to it because OAH has now been notified that the resolution
24 session wasn't -- didn't result in a resolution, which means
25 that the hearing dates have to be moved up, so I don't think

1 it's a blank piece of paper, an empty piece of paper.

2 **MS. MACMURRAY:** Let me just reiterate that OAH does
3 not use that for any purpose like that. The resolution
4 session can only be jointly waived in writing by both
5 parties. That document does not serve that purpose, and if
6 my memory serves, we actually say on the form that it's --

7 **MR. HARBOTTLE:** Yes.

8 **MS. MACMURRAY:** -- not used for that purpose.

9 **MR. HARBOTTLE:** That's correct.

10 **MS. MACMURRAY:** It's statistical.

11 **UNKNOWN FEMALE:** But I'm not talking about a
12 waiver. I'm not talking about waiver. I'm talking about
13 resolution session was held and no resolution was made.

14 **MS. MACMURRAY:** Dates aren't advanced on that
15 basis.

16 **UNKNOWN FEMALE:** Why not?

17 **MS. MACMURRAY:** Because the resolution session was
18 not -- was actually in process. It's only advanced when
19 there's a joint waiver in writing from both parties that the
20 resolution session was waived.

21 **UNKNOWN FEMALE:** I respectfully disagree because I
22 think it's waived or resulted in no resolution.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. At this
24 point we're getting a little bit a far afield of the
25 discussion, which is pro or con concerning the specific

1 recommendation. Okay.

2 It sounds -- you know, there seems to be a
3 disagreement as to what OAH should be doing with this form or
4 not doing with this form or other legal obligations, but
5 right now I think we just need to focus on discussions in
6 terms of in support or opposition to this recommendation.
7 Ms. Malloy?

8 **MS. MALLOY:** Yes, as a parent I would like to know
9 that something was sent to the Office of Administrative
10 Hearings in terms of my paperwork, even if it's something
11 that's going to go to the California Department of Education,
12 because if there is a checkmark that says it didn't happen
13 because of waiver, I'd like to know that I waived something,
14 which could be a potential problem.

15 Now, I did hear that if there is a waiver, it's
16 signed by both parties, etcetera, but at some point it may
17 have been that the resolution problem didn't happen because
18 of a waiver and it is check marked. I'd like to know if, in
19 fact, that was waived by me.

20

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any further
22 discussion? Any in Southern California?

23 **MR. HARBOTTLE:** We have one.

24 **MS. DALTON:** Margaret Dalton.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Dalton?

1 **MS. DALTON:** I'm a little concerned about voting on
2 a form we haven't even seen, so I'm wondering if there's a
3 way before we vote on it if we can see what we're talking
4 about or -- no, I know he has it there, but that -- that was
5 just a comment to make.

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

7 **MS. DALTON:** It seems unusual to vote on it, but if
8 a form is -- that's enough. Sorry.

9 **MS. TAYLOR:** Well, I think that -- this is
10 Constance Taylor. I think that illustrates the point that
11 we're discussing an issue that's not on the agenda and is not
12 properly before the Committee today.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** What I will say is
14 I believe that this -- that it is appropriate, based on the
15 agenda to -- for the Committee to discuss this
16 recommendation, but obviously, if that's a factor that any of
17 the Committee members have, you could vote accordingly.
18 Okay. Mr. Rezowalli?

19 **MR. REZOWALLI:** Yeah. I was just hearing about --
20 I didn't hear on the -- on the recommendation that a
21 signature would be by both parties. I was hearing, unless I
22 have it wrong, that while the responsibility is for the
23 school district that it would be copied to a parent or parent
24 attorney, then the school district sends it out, or that a
25 parent or parent attorney can also send into OAH. Is that

1 correct?

2 **MS. GRAVES:** That's correct.

3 **UNKNOWN FEMALE:** That's what I've done.

4 **MR. REZOWALLI:** But not a signature because I was
5 hearing that. I will suggest that -- I would vote a part of
6 that but not for the whole -- as stated, I'll oppose it. I
7 think that the district needs to have the responsibility. I
8 think it would be a good idea to send it to the parent, but I
9 don't know that parent would be -- or parent attorney would
10 be sending in their own resolution document.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I'd just
12 like to indicate that Ms. Katie Russell has joined us.
13 Welcome very much.

14 **MS. RUSSELL:** Thank you.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Just -- we are
16 discussing item, I believe it's 3.5 on the agenda concerning
17 the update of OAH forms, and there's a recommendation that's
18 on the floor concerning the notice of resolution session.

19 That the notice of resolution session may be
20 submitted to OAH by either party, and that whatever is
21 submitted to OAH be copied to the other party, but that it's
22 ultimately the district's responsibility to submit the notice
23 of resolution session it come to OAH. And -- okay.

24 Is there any further discussion?

25 **MR. HARBOTTLE:** We have one more, Your Honor.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. All right.

2 **MS. DALTON:** I'm Margaret Dalton. Margaret Dalton.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Dalton.

4 **MS. DALTON:** I'd like to propose -- and I -- a
5 change to the motion that we split those two into two
6 separate things. One is that when a district files it with
7 OAH that a copy is sent to the parent or parent
8 representative, separate from the second part, which is I
9 think is then anybody else can send it in. I would like to
10 have two different motions.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry. I
12 understand the first one. What's the second part?

13 **MS. DALTON:** Well, I don't have in writing,
14 Maureen, exactly what you said, but I think the second part
15 was, and if the parent attorney -- either party can send it
16 in, is that what's on the floor, or something to that effect?
17 I would like to split that into two separate things.

18 To me, there's two issues. One is notice. Okay.
19 And the second is who's responsible for the form and who's
20 going to send it in. So I was suggesting we have two
21 separate motions because I think the votes might be
22 different.

23 **MS. GRAVES:** Right. Right now the form says that
24 CDE request -- has requested that the district do this, so
25 the district should complete and fax it to OAH. In lieu of

1 fax, they may mail it. It does not say that they need to do
2 what generally one has to do when communicating with OAH in
3 writing, which is copy the other side. So the form suggests
4 that just sending it to OAH is enough.

5 So I would like the form to just say -- and I think
6 if a parent wants to send in a counter-form saying, "I got
7 this and, in fact, we didn't waive it. They just didn't have
8 it, or they scheduled it at an inconvenient time," the parent
9 should be able to do it.

10 So I'm fine with separating them, but I think right
11 now we have a form that invites districts to do something
12 that they're not supposed to do, which is communicate ex
13 parte with OAH.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** So --

15 **UNKNOWN MALE:** Ex parte with who?

16 **MS. GRAVES:** With OAH.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** So if -- do you
18 understand correctly that one recommendation is that the form
19 should indicate that the district must send a copy of the
20 form to the -- to the parties when they are submitting it to
21 OAH?

22 **MS. GRAVES:** Yes.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Are we
24 ready to take a -- is there a second on -- are we ready to
25 take a vote? Mr. Rezowalli?

1 **MR. REZOWALLI:** Yeah. I could not -- couldn't
2 quite here. Was that the person who -- was that Maureen who
3 made the original and --

4 **MS. GRAVES:** Yes.

5 **MR. REZOWALLI:** Okay. So this is a sort of
6 friendly amendment that she's accepting?

7 **MS. GRAVES:** Yes.

8 **MR. REZOWALLI:** And the person who seconded the
9 first one also agrees to the amendment?

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is -- is there a
11 second?

12 **MR. REZOWALLI:** Well, the person who made the
13 second agreeable to the change?

14 **MS. GRAVES:** The second was --

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Then that would be
16 Ms. Broussard.

17 **MS. BROUSSARD:** Yes.

18 **MR. REZOWALLI:** Okay. Just kind of processing
19 that.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Appreciate your
21 help. Okay. Is there any other discussion on this item?
22 Okay. Are we ready to take a vote? Okay. Southern
23 California?

24 **UNKNOWN FEMALE:** Could you repeat what we're voting
25 on, please, Judge?

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** That the notice of
2 resolution session outcome should be revised to direct the
3 district to send a copy of the completed form to the parties
4 at the time they submit it to OAH.

5 **UNKNOWN FEMALE:** Thank you.

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

7 **UNKNOWN FEMALE:** Thank you.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Southern
9 California, in favor? Please raise your hand and then
10 identify yourself.

11 **MR. HARBOTTLE:** I think we have everyone -- let's
12 see. We have Christine Smith, Robert Wright, Miho Murai,
13 Maureen Graves, Ann Delfosse, Paul Eisenberg and Margaret
14 Dalton in favor.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** And opposed?

16 **MR. HARBOTTLE:** Dan Harbottle.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Dome -- I'm
18 sorry. Mr. Harbottle, you're opposed?

19 **MR. HARBOTTLE:** Yes, Your Honor.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. And
21 did someone -- I did not count. I know there were more in
22 favor than against. Did someone by chance happen to count
23 what the final number was?

24 **MR. HARBOTTLE:** Seven in favor, one opposed. And
25 any abstentions? We have one abstention, Ms. Taylor.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And in
2 Northern California? All in favor? Okay. We have Ms. Dome.
3 Is that every -- Ms. Broussard, Ms. Knox, Ms. English, Ms.
4 Malloy, Mr. Rezowalli. Okay. Any opposed? No opposed. And
5 Ms. Russell?

6 **MS. RUSSELL:** Abstained.

7 **UNKNOWN FEMALE:** I didn't get Gibson.

8 **MR. GIBSON:** I'm abstained.

9 **UNKNOWN FEMALE:** Got it.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Thank you. And so
11 the recommendation passes. All right.

12 Now, I believe there was a suggestion that there be
13 a second portion of this, the original recommendation, but it
14 wasn't clearly articulated, to me at least. I wasn't sure
15 what it was, and Ms. Graves, you didn't indicate whether you
16 agreed to it or not, so -- or is -- is that no longer on the
17 table to be discussed?

18 **MS. GRAVES:** I don't really care about the second
19 part. I think the second part was that the parent or parent
20 counsel should also get -- representative should also get the
21 form, and it should be optional if they want to send it in or
22 not, but I don't care about it.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So you're
24 not willing to take that on so -- was your original
25 recommendation -- okay.

1 Anything else before we move on to the next item?

2 **UNKNOWN MALE:** So that's being withdrawn?

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** It's withdrawn?

4 **MS. GRAVES:** It wasn't mine in the first place. I
5 think it was Ms. Broussard, so I think I would support it,
6 but I'm not thinking we should talk about it.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Do you want to
8 make a --

9 **MS. BROUSSARD:** I need to think.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

11 **MS. BROUSSARD:** Is -- I just have a question before
12 I can do that. Is there a separate form then for notifying
13 OAH -- if this is only for data purposes and it's only for
14 tracking purposes and not for notifying OAH in an official
15 manner that the resolution session is waived or not
16 productive for purposes of changing the dates, that to me is
17 one thing.

18 So I guess my first question is, is there a
19 different form to be used that changes dates?

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** As the law
21 requires, if the parties provide a written waiver of the
22 resolution session, then that can have an effect on the dates
23 because the 45-day timeline immediately starts. Is that what
24 you're referring to?

25 **MS. BROUSSARD:** Waiver or an unsuccessful

1 resolution session.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, there are no
3 other OAH forms having to do with the resolution session or
4 waiver or --

5 **MS. BROUSSARD:** So --

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- other than this
7 form.

8 **MS. BROUSSARD:** So I guess my point is I get
9 concerned then if you've been officially noticed by a party
10 that -- that something has happened, which should trigger a
11 timeline change, are you not accepting that form for that --
12 okay. See if I can say this more clear.

13 If you're getting -- if OAH is now getting notice
14 if a resolution session has been waived, but is not taking
15 action as statutorily required based on that, then I'm --
16 then I'm wondering whether or not there needs to be a second
17 form filled out.

18 I mean, if -- if you're getting that notice, then
19 what happens? Because the requirement under the law to move
20 it up is that both sides -- it's signed by both sides in the
21 Administrative Procedure Act. Part of it they have to --
22 OAH's rule -- local rule for something (inaudible).

23 **UNKNOWN FEMALE:** It's just -- it's just typically a
24 letter submitted by the parties. There's no form.

25 **MS. BROUSSARD:** But now you're --

1 **MS. DOME:** May I?

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure. Ms. Dome.

3 **MS. DOME:** Dora Dome, so I guess in my perspective,
4 I'm seeing it as mixing two issues. The issue of whether or
5 not there's another form that provides a notice that you're
6 talking about, I don't think is actually on the table. I
7 think if that is a concern about how OAH is being noticed
8 about whether a resolution session is unsuccessful is a
9 separate issue that should be agendized properly so that we
10 can address it.

11 I think the issue is about this specific form,
12 which OAH has represented they do not use for any purpose
13 other than gathering data to transmit to CDE, in which case,
14 if that is the only purpose of the -- excuse me -- of that
15 form, then what we, I think, appropriately can be addressing
16 today on that form is, you know, whether or not -- I think
17 the second part of the motion was parents should be allowed
18 or parent attorneys should be allowed to submit it. I mean,
19 I think that they're separate issues.

20 **MS. BROUSSARD:** I -- I think Dora makes a good
21 point. I withdraw part two, and we'll deal with that on the
22 agenda of the next meeting.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. That's what
24 I was going to suggest. If you want to include that as an
25 agenda item for our next meeting, then by all means, submit

1 it to me. Okay. All right. Moving on. Okay.

2 An update concerning online filing and electronic
3 service of documents. I believe at the last meeting it was
4 indicated that OAH is researching the possibility of allowing
5 for both fax service of documents and filings and also email
6 service and filings. And this is something that is being
7 considered by OAH generally, both the General Jurisdiction
8 Division and the Special Education Division.

9 And basically, I just have a very brief update that
10 they're just continuing to look at that, and what I -- what
11 procedures and IT requirements would be necessary in order to
12 -- to do that, but no decision has been made concerning
13 implementing that at this point for the Special Education
14 Division. Yeah.

15 Any questions?

16 **MS. DOME:** I have a question --

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Dome?

18 **MS. DOME:** -- or comment, and it may be appropriate
19 at the next agenda, but what is OAH's position when a party
20 (inaudible) electronically serves another party who has not
21 agreed to be served electronically in terms of the starting
22 of the timelines?

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's an
24 interesting question, and actually, it's one of the areas
25 that I know that we are looking into in terms of what the law

1 requires should we go down this path.

2 Other than that, I -- you know, unless there's a
3 situation before me in terms of the -- that a party is
4 actually doing that and a decision needs to be made as to
5 that particular case, what to do with it and what legal
6 impact it has. Other than that, I really can't provide any
7 general point of view.

8 **MS. DOME:** So can we put this maybe on the agenda
9 for next session (inaudible) make a recommendation that --
10 because it's happening, and so, you know, this would be an
11 area that -- you know, I think certainly from my perspective,
12 my firm would like to see perhaps some -- in terms of whether
13 it's valid service, if our client has not agreed -- or we
14 have not agreed to be served electronically.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. What I
16 would suggest you do is submit it as an agenda item to me.

17 **MS. DOME:** Okay.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** And to the extent
19 that you -- or that -- in terms of the Advisory Committee,
20 that's how it should be handled.

21 In any particular case, if there's some issue, I
22 don't know whether it's a question of something that you want
23 to bring to my attention to deal with as a procedure issue
24 that I would encourage you to do that, or certainly if you
25 feel that there -- because of the legal ramifications of

1 this, if it gives rise to a notice -- I mean, a motion in a
2 given matter, I would certainly -- you know, that would be
3 the venue to do that as well.

4 **MS. DOME:** Okay.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Anything
6 further on just the brief update that we're continuing to
7 look into this? Okay.

8 The next item has to do with a subpoena update. I
9 believe it was two meetings ago there was a discussion and
10 concerns raised that administrative law judges were not
11 consistently following, I guess, certain process or
12 interpretation of the various subpoena laws in special
13 education matters.

14 And we have done extensive research and taken a
15 look at this. I guess the bottom line at this point is that
16 OAH is continuing to follow what the original procedure was,
17 which is that attorneys can issue subpoenas and subpoenas
18 duces tecum and the non-represented parties can request
19 subpoenas and subpoenas duces tecum from OAH, and that we
20 will issue those without any further review or
21 appropriateness review.

22 And that a motion to quash would continue to be the
23 appropriate avenue by which an individual would challenge a
24 subpoena. And so basically that's the current process that
25 OAH is following. Okay.

1 Any comments or questions? No? Okay.

2 **MS. GRAVES:** This is Maureen Graves. I've been
3 asked to seek clarification on how these subpoenas are
4 supposed to work. Apparently, in a case a party was served
5 with a notice to consumer demanding production of records
6 before a hearing. And since the CCR says that the subpoena
7 provisions of the government code are not applicable to
8 special education hearings, and yet those are in -- on the
9 OAH website as to how subpoenas are to work, I think people
10 are confused.

11 Throughout my time in special education practice
12 I've never thought that we were able to get documents by
13 subpoena prior to a hearing, and lately sometimes that seems
14 to happen and sometimes it doesn't.

15 So I -- I think the clarification -- the confusion
16 goes very deeply on this, and I'm not -- I don't understand
17 what the rules are at this point or what -- how OAH is
18 dealing with the provision of the CCR saying that the
19 subpoena provisions of the government code aren't applicable.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm not sure what
21 you're asking. I mean, is it just a comment or --

22 **MS. GRAVES:** Well, no. Our -- is it OAH's view
23 that people can do subpoenas and get documents produced to
24 them prior to hearings or just that you get to have documents
25 brought to the hearing?

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** You know, it's not
2 appropriate for me to respond in terms of OAH's view because
3 it all depends on a case-by-case analysis.

4 As I indicated, if there is a subpoena that is --
5 someone feels is not appropriate or was not appropriately
6 served or was -- is not supported by law, the current
7 mechanism by which one would challenge that would be a motion
8 to quash, or some other similar motion, brought to OAH,
9 notice to the other side, and then a ruling on a case-by-case
10 basis by an administrative law judge.

11 **MS. GRAVES:** All right. So the website's
12 frequently asks questions section under subpoenas, last time
13 I looked at it, said that, "The requirements for serving a
14 subpoena must be observed or the subpoena will be
15 ineffective. Those requirements can be found in Government
16 Code Sections 11450.05 through 11450.50," which according to
17 5 CCR Section 3089 are not applicable in special education
18 proceedings. So I'm concerned about referencing something
19 that's not applicable.

20 And I don't know if this is -- Steve Wyner tells me
21 this has come up in previous meetings and has been discussed,
22 and I don't know what the conclusion of that is, but he
23 thinks it's an ongoing issue. And from my experience, no one
24 seems to understand what's going on.

25 **UNKNOWN MALE:** So what are we going to do?

1 **MR. HARBOTTLE:** Maybe we can articulate the
2 recommendation in a form of a request that OAH clarify Ms.
3 Graves's specific legally -- legal citation to the -- to the
4 question. "Does or doesn't the government code provisions
5 regarding subpoenas apply in these settings or not?" Because
6 there appears -- I haven't seen this -- these set of
7 provisions on the OAH website myself, but if there is this
8 inconsistency, it probably makes sense for us to engage it
9 and see if there's a way to clarify it. Did that come
10 through?

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. So the
12 record --

13 **MR. HARBOTTLE:** (Inaudible).

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry. Could
15 you restate the recommendation or the proposed
16 recommendation?

17 **MR. HARBOTTLE:** That OAH address the question
18 whether subpoena -- the subpoena power embodied in the
19 government code is or is not applicable to special education
20 matters adjudicated by OAH, and whether 5 CCR 53089, I think
21 you said, would preclude that. Is that the right citation?

22 **MS. GRAVES:** Just checking.

23 **UNKNOWN MALE:** Would it simpler to say the OAH has
24 to put the right -- in writing what their rules are going to
25 be on how they're going to handle subpoenas?

1 **MR. HARBOTTLE:** I think that's the outcome.

2 **UNKNOWN MALE:** Right. So good.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is there a second?

4 **MS. GRAVES:** Second.

5 **UNKNOWN FEMALE:** What's a government code section?

6 **MS. GRAVES:** 30 -- the Government Code Sections are
7 11450.05 to .30, and the CCR section is 5 CCR 3089.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** And there was a
9 second. Is that by you, Ms. Graves?

10 **MS. GRAVES:** Yes.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any
12 discussion? Okay. Is the Committee ready to vote? Yes?
13 All right.

14 Starting the Northern California, all in favor?
15 Actually, it's unanimous. Just the record, any opposed? Any
16 abstentions? I'm seeing none.

17 And in Southern California, all in favor?

18 **MR. HARBOTTLE:** I think we're unanimous, Your
19 Honor.

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. And no --
21 no in -- no one in opposition and no abstentions, so it
22 carries unanimously. Okay.

23 Anything else concerning subpoenas?

24 **MR. HARBOTTLE:** I just have one point, Your Honor.
25 It might be helpful to the new folks. That I think it's

1 important we realize that this is not -- we're not going to
2 change OAH procedure today. All we're doing is making
3 recommendations that OAH can either accept or reject, so this
4 is not going to actually necessarily become adopted by OAH.
5 We're just making recommendations.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's correct.

7 **MR. HARBOTTLE:** Okay.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** And I did have a
9 note here from a member of the public asking members not to
10 shuffle papers near the microphone because the microphones
11 are sensitive and I know I've probably been a major violator
12 of that. So I apologize to those who are listening on the
13 webcast, and we'll see if we can cut the -- the background
14 noise down. Okay.

15 That finishes the sort of update information. And
16 now moving on to item four dealing with a specific hearing
17 process agenda items.

18 The first one, which was marked as 4(a) has to do
19 with prehearing conference statements, and under 4(a) are
20 basically examples or situations that have presented problems
21 in terms of calendaring and scheduling for -- for OAH, having
22 to do with the submission of prehearing conference
23 statements, the late submission of prehearing conference
24 statements, not receiving any prehearing conference
25 statements.

1 And I guess what I'd like to do is maybe give you
2 some info -- you know, just describe from us what seems to be
3 a process problem, and then open it up for your discussion
4 and -- and any recommendations that you may have.

5 Now, currently the prehearing conference statements
6 are to be filed three business days prior to the prehearing
7 conference. And I certainly understand that for all the
8 parties, as you get to that point in your hearing
9 preparation, there is a major conflict between putting all
10 your efforts towards resolving and settling the matter
11 without going through to a hearing, and doing what you need
12 to do to prepare for the hearing and comply with the
13 prehearing conference statement requirements.

14 So we have seen significant numbers of prehearing
15 conference statements that aren't filed within the three
16 business days. And, you know, in order to facilitate a
17 settlement, we have agreed that if the parties wish to
18 request an extension of time to file the prehearing
19 conference statements in order to facilitate settlement
20 discussions, that we would certainly grant that with the
21 final that -- that the prehearing conference statement would
22 be submitted no later than noon the business day immediately
23 before the prehearing conference.

24 But even with that process, we are still having
25 problems with people not submitting prehearing conference

1 statements at all, or one party submitting them and not the
2 other party. And we have had calendar staff contact parties
3 in order to get the prehearing conference statements in.

4 And for our purposes, with the -- in terms of
5 calendaring, unless there is a continuance granted, that
6 prehearing conference is going. And so when no prehearing
7 conference statements are submitted, it gives us some
8 indication that, at least from the party's point of view,
9 that maybe this PHC and/or hearing is maybe not going to go
10 forward, but from our standpoint, you know, the matter has to
11 be assigned to an administrative law judge, and an
12 administrative law judge has to prepare for the prehearing
13 conference.

14 And I don't know whether -- I guess part of it is
15 just information sharing in terms of letting you all know the
16 difficulty it presents on our side in terms of staffing
17 resources, both in terms of calendar clerks calling and
18 judges preparing. We certainly understand the -- the time
19 pressures and priorities that both sides -- all the parties
20 have.

21 And I guess I, at this point, would -- would
22 welcome any suggestions or ideas. One item that was a
23 suggestion we had posted on the agenda was whether it would
24 sense perhaps to say rather than three business days, let's
25 have the prehearing conference statements come in two

1 business days prior to the -- to the scheduled prehearing
2 conference.

3 So I guess at this point I just want to open it up
4 for discussion, other recommendations, if you want to discuss
5 the recommend -- or the proposal or the idea of having PHC
6 statements come in two business days prior. You know, at
7 this point I'm really asking for your assistance to try to
8 see if there is a -- any creative ideas we might have to meet
9 your needs, as I said, in terms of balancing settlement and
10 resolution, and your needs, as long as our needs with moving
11 a matter to hearing -- that's going to go to hearing and
12 having an administrative law judge have sufficient time to
13 prepare so that a prehearing conference statement can be
14 handled efficiently and effectively. So any --

15 **MR. HARBOTTLE:** I have a question or a -- I guess a
16 comment and a question. This is Dan Harbottle. I am not
17 initially in favor of moving the date for the PHC statements
18 because many, many cases don't settle, and you still need as
19 much time as you can with the other party's PHC statement,
20 including the list of documents, etcetera. Also, I would
21 probably not make a global change --

22 **UNKNOWN MALE:** (Inaudible).

23 **MR. HARBOTTLE:** If I understand Your Honor
24 correctly --

25 **UNKNOWN MALE:** (Inaudible).

1 **MR. HARBOTTLE:** -- you're generally or almost
2 universally accepting stipulations that the PHC statement can
3 be submitted 24 hours, or by noon the business day before; is
4 that right?

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** That's correct. I
6 mean, I -- I am not aware of any circumstances where they've
7 been denied and nor am I -- can I even think of a
8 circumstances where we would deny that request.

9 **MR. HARBOTTLE:** So I would just want to put that in
10 writing. That if the parties wish to stipulate to delay the
11 PHC statements, they will submit a stipulation to that effect
12 by the date the PHC statement would otherwise be due. And if
13 they do that stipulation, in that case the PHC statements are
14 then due no later than noon the business day before.

15 So only -- we have a -- our problem when we submit
16 those is we don't know with certainty that they're going to
17 be approved. We expect they will, and I've never had one
18 denied, but it would be nice to have a level of certainty
19 that we know that as long as we've sent the stip in we're --
20 we're clear until 24 -- the 12 noon before. That way we have
21 a couple extra days to try to settle, in which case we can
22 submit a settlement if we settle.

23 I hate to submit the proposal of developing other
24 form, but maybe we can just submit a stip by that date the
25 PHC would otherwise be available.

1 **MS. GRAVES:** I would second that. Maureen.

2 **MR. HARBOTTLE:** I have a second here. Was it clear
3 what I was proposing?

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** When you say
5 stipulation, are you indicating something signed by both
6 parties?

7 **MR. HARBOTTLE:** Yes.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

9 **MR. HARBOTTLE:** We have a little form that we
10 always use for these, and the only uncertainty we had is
11 whether OAH is going to come out of nowhere and tell us it's
12 no good and that we're all in -- you know, in violation.

13 But again, we trust you understand, and it sounds
14 like you do understand why we're doing it. So if we have
15 something on the website -- or on the -- on the order that
16 comes out that says, "If you wish to delay, submit a
17 stipulation by the day it would otherwise be required."

18 **UNKNOWN MALE:** And just a question if I can for
19 clarification. That it would have to be agreed on by both
20 sides?

21 **MR. HARBOTTLE:** Yes. Yes.

22 **UNKNOWN MALE:** So you need three days to submit the
23 statement. The other party side has to agree to that
24 continuance?

25 **MR. HARBOTTLE:** Correct.

1 **UNKNOWN MALE:** And then we have to wait for the OAH
2 to rule and then --

3 (Inaudible - - due to simultaneous colloquy.)

4 **UNKNOWN MALE:** Well your goal is that if both sides
5 agree --

6 **MR. HARBOTTLE:** Right.

7 **UNKNOWN MALE:** Makes sense.

8 **MR. HARBOTTLE:** Okay. So I think it's clear with
9 us. I'm not sure if it translated.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah. Is there a
11 second to that recommendation?

12 **UNKNOWN FEMALE:** Yes. Maureen.

13 **MR. HARBOTTLE:** There is.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Any further
15 discussion? Ready to vote?

16 **NOTE TAKER:** Well, do you -- can you restate the
17 proposal since I --

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. You want to
19 try?

20 **NOTE TAKER:** I think I wrote it down.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Good.

22 **NOTE TAKER:** That the parties would submit a
23 stipulation to continue the PHC statement due dates. It
24 would be due noon the business day before the prehearing
25 conference, and that this would be automatic, and the

1 information would go on the initial documentation that came
2 out to the parties. Is that right?

3 **MR. HARBOTTLE:** Not quite.

4 **NOTE TAKER:** All right. Fix it.

5 **MR. HARBOTTLE:** Okay. Are you ready?

6 **NOTE TAKER:** Yes.

7 **MR. HARBOTTLE:** The stipulation to delay the PHC
8 statements would be due -- I stopped because I heard the
9 paper, and I think that's the -- that was the problem.

10 **NOTE TAKER:** Sorry. I'm the note taker and I'm
11 next to the microphone.

12 **MR. HARBOTTLE:** Okay. I just want to move. So the
13 proposal is the PHC -- if the parties wish to delay the PHC
14 statement, they will submit a stipulation to that effect no
15 later than the date and time by which the PHC statement would
16 otherwise be due, in which case the PHC statement would then
17 be due --

18 **NOTE TAKER:** I can't -- hang on. Hang on. I -- I
19 can't keep up with that. That's great. Can you just go
20 slower?

21 **MR. HARBOTTLE:** If the parties wish to delay the
22 PHC statement filing.

23 **NOTE TAKER:** Yes.

24 **MR. HARBOTTLE:** They will submit a stipulation to
25 that effect by the date the PHC statement would otherwise be

1 due. If they file that stipulation, the PHC statement then
2 automatically will be due no later than noon the business day
3 before the PHC.

4 **NOTE TAKER:** Okay. Okay.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yes. Discussion?

6 **MS. MALLOY:** Yes.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Malloy?

8 **MS. MALLOY:** We had a question about whether it was
9 going to change from -- is it going to be two days or three
10 days, so I think in the motion it needs to include what --
11 what -- what -- are we saying the date is going to be prior
12 to otherwise due. Will that be two days before? Will that
13 be three days before?

14 **MR. HARBOTTLE:** That would remain three days.

15 **MS. MALLOY:** Okay. Thank you.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any other
17 discussion? All right.

18 Let's start in Southern California. All those in
19 favor raise your hand.

20 **MR. HARBOTTLE:** We're unanimous, Your Honor.

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** All right. And
22 Northern California, raise your hand in favor. We have Ms.
23 Dome, Mr. Gibson, Ms. Broussard, Ms. Knox, Ms. English, Mr.
24 Rezowalli and Ms. Russell in favor. Opposed? No -- no one
25 in opposition? And abstentions? Ms. Malloy. All right.

1 It looks like that recommendation has passed.

2 **UNKNOWN FEMALE:** Your Honor.

3 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah.

4 **UNKNOWN FEMALE:** I'm not sure of what point -- I
5 have -- I'm getting a pile of public comment.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh.

7 **UNKNOWN FEMALE:** So maybe I can interject here.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Please do.

9 **UNKNOWN FEMALE:** For one moment. So the first one
10 is, "I have a question for the October 26 Committee. What do
11 you see as the impact of the Governor's veto of 3632 funding
12 on the IEP process and schools (inaudible)? How should
13 schools respond to the possible change in the funding or the
14 mandate for mental health services providing through the
15 IEP?"

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** I think what I'd
17 like to do is let's -- that should be during -- be during the
18 public comment period.

19 **UNKNOWN FEMALE:** Okay. So do you want me to
20 separate --

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah. I think --

22 **UNKNOWN FEMALE:** -- comments from --

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah. I'm sorry
24 for not clarifying this. As comments come in that are on the
25 topic that we're discussing --

1 **UNKNOWN FEMALE:** Okay.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- then you should
3 shut me down and make sure that we have an opportunity for
4 those comments to be heard, and for those things that are not
5 on the agenda then we can have the -- the other -- the public
6 comment section.

7 **UNKNOWN FEMALE:** Okay. Then let me get the ones
8 that are --

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

10 **UNKNOWN FEMALE:** "With regard to PHC statements and
11 joint stips, our district has experienced that OAH does not
12 always accept the joint stipulation to delay the statement
13 exchange through -- exchange through -- it was agreed to be a
14 business day before the PHC. Judges would need to be
15 universally informed so that they honor the joint
16 stipulations consistently." (Inaudible).

17 **MR. HARBOTTLE:** I think that's probably been taken
18 care of, Your Honor, by the vote.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right. And
20 certainly whatever -- whatever change to the process that OAH
21 makes, either in response to the recommendation or on our
22 own, we'll certainly communicate that to the staff, both the
23 calendar staff, the judges and the PJs.

24 **UNKNOWN FEMALE:** I think you can go forward because
25 these came in earlier, so I think they have actually passed,

1 but I think -- I'll separate them and jump back in.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Terrific.

3 Okay. Anything further on PHC statements? No. Okay.

4 The next item has to do with a delayed submission
5 of notices of withdrawal or dismissal after settlement.
6 Generally this has come up in very -- more often than not we
7 will, sometimes in connection with a mediation convening
8 call, either by staff or a judge, or in connection with a
9 staff call regarding PHC statements that hasn't come in. We
10 will get informed by the district in a student filed matter
11 that there has been a settlement and that the student is to
12 submit a notice of withdrawal, and then we just don't get the
13 notice of withdrawal in a timely fashion.

14 And I just want to encourage the use of the online
15 form, either by attorneys or non-represented parties, just
16 encourage parties -- and I totally understand, you know,
17 years being out there doing litigation. You know, you get
18 the -- sometimes it's just even the agreement on principle,
19 and then it's like that case is finished and you're moving on
20 to the next five that are in the cue.

21 But I guess it's just an encouragement to make sure
22 that that final piece of paperwork, in terms of a written
23 notice to OAH, the copy to the other side, that the matter --
24 that the matter has been settled and that you wish to
25 withdraw the complaint or request that it be dismissed come

1 in just in a timely fashion.

2 Because, again, even though we may have that
3 information and even though it may be true, until we get that
4 piece of paper, that mediation is going to -- you know, it's
5 on the judge's calendar and the time is allotted for that
6 judge to go to the mediation or to conduct the PHC or to
7 attend that hearing, and it's just really very, very helpful
8 to have that paperwork come in. It could be taken off the
9 calendar, and then that judge is assigned and available to
10 other duties.

11 Sort of as a side note -- and this is sort of a
12 flip issue -- is that we have seen increasingly parties
13 submitting notice -- an agreement to withdraw in connection
14 with the settlement agreement. And so I want to encourage --
15 I mean, that's a good thing. We're getting that written
16 documentation.

17 The complicating factor is that sometimes it's
18 included in a settlement document that includes substance
19 having to do with the settlement, and it presents a problem
20 for us in terms of settlement documents we need to keep
21 confidential, but yet the document indicating that the
22 parties agree to withdraw the complaint or dismiss the
23 matter, that has to be available in our Practice Management
24 System in terms of the paper trail.

25 And so if that is the written document that's going

1 to be submitted, if you can blacken out or redact any of the
2 substantive settlement stuff and just keep the one paragraph
3 or the one sentence having to do with the dismissal and the -
4 - the signatures of the parties that would be very, very
5 helpful to us because we could just scan that into the
6 system. We have the paper trail regarding the dismissal, and
7 we don't have to worry about any confidential settlement
8 issues, just in case something happens and that case has to
9 be readjudicated or relitigated by our side.

10 So I don't know if anyone has any comments or
11 questions about that. It's basically just information
12 encouraging parties to keep us informed and to get the -- the
13 final withdrawal in.

14 **MR. HARBOTTLE:** We have one comment, I think.

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

16 **MS. DALTON:** Hi. Margaret Dalton.

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** Ms. Dalton.

18 **MS. DALTON:** More question or comment, and that is
19 that -- back to the first point, the notice of withdrawal
20 following settlement. Where we're finding an issue is we're
21 -- we have a settlement agreement but it requires Board
22 approval, for example, and that's -- that's where it becomes
23 an issue because we can't withdraw until after Board
24 approval. And I know at least one of your forms I've seen
25 has something that helps with that, but that's the big issue.

1 We would like to just have it continued until that
2 Board approval, but that's not always an option, so that's --
3 that's, from our point of view, anyway, in the cases I've
4 seen, that's why you don't get that withdrawal when we might
5 all want to get it to you.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right.

7 **MS. DALTON:** Because we can't.

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right. And I
9 understand that, and you know, very often it will happen in
10 terms of mediations, and we'll schedule the status conference
11 hopefully after the Board meeting. And then I know from time
12 to time it's happened where something happens and either it
13 didn't go to the Board meeting, and so we'll just kick the
14 status conference further down the road. But yeah, no, I --
15 I completely understand. Yeah. It's just a matter of trying
16 to keep the communication open --

17 **MS. DALTON:** Right.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** -- to address all
19 of our needs, but it's a point well taken. Anything else?
20 Okay.

21 The next item -- actually, it kind of dovetails
22 with the recommendation that -- that you had regarding the
23 request or stipulated agreement to extend PHC statements.
24 And this is just having to do with a submission of stipulated
25 requests, and if -- it would be helpful for us if -- at the

1 bottom of your stipulated request, if you would just include
2 a very simple order, thinking optimistically, that the judge
3 or the PJ is going to sign the request.

4 For example, if there is a stipulated request for a
5 continuance, it's not on the initial form, it may be a
6 subsequent request. That way if good -- you know, if the
7 presiding judge finds that good cause is shown and the
8 request for continuance is going to be granted -- just
9 something simple like, you know, under the signatures of both
10 parties you could have something such as "it is so ordered"
11 with a date line and signature line, for either the presiding
12 judge or for the administrative law judge to sign. It would
13 be very, very helpful.

14 That's not to say that any time you submit a
15 stipulated request with a signature line like that that we're
16 going to grant it. But if we are going to grant it, it
17 certainly makes it easier for us because we can sign that and
18 use that instead of actually issue a form.

19 So any comments or discussions on that? Okay.

20 **UNKNOWN MALE:** It looks like you skipped over, Your
21 Honor.

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** I'm sorry?

23 **UNKNOWN MALE:** Did you skip C or did I miss C?
24 "Request for mediation or calendar changes by Thursday week
25 before."

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, I did. I did
2 miss that. I'm going off my notes and not the agenda. Thank
3 you. Item 4(c), "Requests for mediation or calendar changes
4 by Thursday the week before the event."

5 This has to do with the calendar process, and
6 Thursday -- for example, this Thursday the calendar should
7 pretty much be set for the first part of next week. So if,
8 for example, there is a request to change a mediator or if
9 you want to change a mediation date within that week, move it
10 from one day to the other, or change a time of a prehearing
11 conference, or those types of things, which ordinarily are
12 the types of thing that we will grant and accommodate,
13 assuming that we can, those need to be submitted prior to the
14 Thursday of the week before the event. Anything -- because
15 you -- ordinarily that can be done ministerial with staff.
16 It can be taken care of fairly quickly. Once you hit
17 Thursday, the calendar really -- it becomes much more
18 difficult in order to make those changes.

19 And again in certain -- certain times it seems as
20 though there's a flurry of kind of last minute changes, and
21 especially, for example, if it's a matter of mediation. You
22 know, we want to do everything we can to provide a mediator
23 and to facilitate mediation and settlement, so it's not a
24 question that we don't want to do that. It's just that any
25 request that comes in after that just becomes a much harder

1 request for us to -- to grant, so the earlier you can get it
2 in, the easier it is for us to accommodate those types of
3 minor calendaring issues.

4 Yeah Mr. Gibson?

5 **MR. GIBSON:** The agenda says "by Thursday," but
6 you're saying before Thursday so by close of business
7 Wednesday or --

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** No, I'm saying by
9 Thursday.

10 **MR. GIBSON:** Yeah.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** For me, especially
12 now that I'm new to the calendar, and I must say it's an area
13 that, although, I like to -- even when I was a line judge, I
14 just sort of liked to learn everything I could. I just
15 always cultivated ignorance about the calendar because it
16 just gave me heartburn to look at it. And I must say after a
17 couple of weeks, you know, the heartburn is lessening.

18 But the earlier that can come in, especially as
19 I'm, you know, still trying to learn the process, the easier
20 it is for us to -- to accommodate you. But yeah, sort of the
21 bottom line would be Thursday, close of business on Thursday.
22 So thanks for the clarification.

23 **MR. GIBSON:** Sure.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Anything else?
25 Okay. So I think we are on to E, notice -- I'm sorry?

1 **UNKNOWN FEMALE:** No. I'll wait.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Is there a
3 comment?

4 **UNKNOWN FEMALE:** No. Not on this. There are
5 several that I missed.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, you want to.

7 **UNKNOWN FEMALE:** Why don't we finish E, and then
8 I'll do it

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

10 **UNKNOWN FEMALE:** Before we go into mediation.

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Good idea.

12 Notice by parties of peremptory challenge. Okay. You know,
13 as -- as the law provides, the way that special ed calendars
14 the matters, the OAH regulation that governs preemptory
15 challenge provides that a preemptory challenge needs to be
16 made no later than the commencement of a prehearing
17 conference. And, again, the reason why I'm bringing it up is
18 because of calendaring issues and trying to meet everybody's
19 needs, which is if a peremptory challenge is going to be
20 made, that's fine. What I want to be able to do is get
21 another administrative law judge assigned to that matter who
22 can handle that prehearing conference as scheduled because
23 that's -- you know, our prehearing conferences, now that
24 they're relatively soon before the due process hearings, the
25 goal is that, you know, there shouldn't be any delays.

1 Even though the -- the regulation does allow that
2 for our convenience that we can delay the prehearing
3 conference, and unfortunately there have been some occasions,
4 not very often, when we've had to do that.

5 So what I'm encouraging everyone to do is, you
6 know, if you know that there is somebody who is assigned to a
7 matter that you are going to exercise your right to file a
8 peremptory challenge, that you do that sooner rather than
9 later. I also understand that there is -- you know, there
10 are times, more often than I think -- I know -- I would like,
11 and any of us would like, where there are last minute
12 scheduling changes that are happening.

13 And so I understand that there might be -- well,
14 you know, even though I know you may know that, you know, two
15 weeks before the prehearing conference somebody has been
16 assigned to it that might change, so let's just wait until we
17 see who's going to actually do it. I totally understand
18 that. But I must say that there are times when there haven't
19 been changes, and the person who -- the judge who is doing
20 the prehearing conference -- or there hasn't been any last
21 minute changes -- that person has been out to the world in
22 terms of on the calendar, and we still may get a fairly late
23 prehearing peremptory challenge, and usually it's coming the
24 morning of the PHC.

25 So, again, you know, I understand the -- you know,

1 what your interests are. I'm just encouraging you to file a
2 peremptory challenge sooner rather than later because then
3 you may clear that -- whoever it is that you are challenging
4 for whatever reason, that that person will not be assigned to
5 adjudicate that case, and the goal being that you can
6 exercise your right to challenge the judge. We can reassign
7 the matter. The judge has time to get up to speed, and that
8 that prehearing conference can go as scheduled because that's
9 what everybody would like to see.

10 So I'll open it up for any comments, questions.
11 Okay. Thanks. I appreciate your -- your -- hopefully I'll
12 take the consent that you'll -- you'll commit yourself to
13 filing those challenges sooner rather than later and make
14 sure that we can proceed without any delay.

15 **UNKNOWN FEMALE:** I have several comments.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

17 **UNKNOWN FEMALE:** And I apologize for not getting to
18 them earlier. The first one is, "I'm concerned about the
19 clerical burden being recommended to be placed on districts
20 in this budget time with regard to the resolution outcome
21 form and additional mailings, faxings to other parties. The
22 form is puerile a statistical tracking mechanism for CDE and
23 the federal government. What regulation guides this
24 recommendation and obligates districts to adhere to the
25 Committee's recommendations to automatically provide copies

1 to parents or attorneys or parent attorneys?" So --

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. The
3 question is what regulation -- I --

4 **UNKNOWN FEMALE:** "What regulation guides this
5 recommendation and obligates districts to adhere to the
6 Committee's recommendation to automatically provide copies of
7 the -- copies to the parent or the attorneys -- parent
8 attorneys of the resolution form."

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, what I can
10 say is that all -- all that we have before us is the
11 recommendation of the Advisory Committee, and what will
12 happen is OAH will provide a written response in terms of
13 whether we agree or disagree or whether we're going to
14 implement the recommendation or not or do something else, so
15 right now there's just a recommendation.

16 And in terms of the legal effect of either the
17 recommendation or the form, you know, to be honest, we're --
18 you know, this is just a informal process, and OAH is
19 committed to working with the Advisory Committee to improve
20 our processes and procedures, but you know, unless there's a
21 statute or regulation that requires certain aspects of the
22 form to be complied with, you know, it's up to -- you're
23 following whatever advice you have out there in terms of
24 whether you're going to comply.

25 But as I said the -- and we are also very aware of

1 all the budget concerns out there, and we're trying to
2 provide the information to -- to CDE to respond to the
3 requests and needs as expressed by the recommendation of the
4 Advisory Committee, and you know, let's just see where we
5 are.

6 **MS. GRAVES:** This is Maureen Graves. 5 CCR 3084
7 governs ex parte communications, and it deals with
8 communications to a hearing officer, so I suppose if it were
9 guaranteed that no hearing officer would ever see one of
10 these things, it might not apply, but I think it probably
11 someone sees them sometimes.

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

13 **UNKNOWN FEMALE:** So the next comment. "No question
14 in my view that the best thing to do about the website for
15 now is just to put it back where I was. It used to work and
16 now it doesn't. And the saying in my trade is true, any
17 program that works is better than any program that doesn't.
18 The state lacks money these days. It's not worth noodling
19 around with this when you can go back to what works, and the
20 expense and time of trying to make the new work won't really
21 buy anything for its users anyway."

22 That's -- and then the last one. "Perhaps it's
23 unavoidable, but much of your meetings consist of very
24 mundane things, like the one meeting where over an hour was
25 spent discussing the colors of folders people use in

1 hearings, another half hour about where to have a meeting,
2 who will take notes, questions about the Brown Act, office
3 moving and locations, form -- forms to use. With all the
4 lack of social -- social justice our children with
5 disabilities face in the DP system, it would be refreshing
6 for your Committee to add a lot more substance to your
7 discussions. Parents are craving some discussions about lack
8 of access to legal help, lack of ability to have our experts
9 observe our children in schools, lack of ALJ training, lack
10 of inclusion. Where's the beef, people? In all your
11 meetings -- if all your meetings are mostly going to consist
12 of this discussion about how to have the meetings and meeting
13 procedures, why even bother? It's like the Committee exists
14 to only give the illusion of parent input and the illusion of
15 parent participation, while accomplishing absolutely nothing
16 and doing very little to make the system better for parents."
17 That's it.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.

19 **MR. HARBOTTLE:** We have a comment in the audience
20 out here, Your Honor.

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

22 **MS. CHEN:** Hi. My name is Jody Chen. I'm a
23 parent. And I also would like to ask and make a
24 recommendation that your website could also include
25 information about these meetings, because I actually heard

1 about this only through, you know, some -- a stranger,
2 actually. And I think from support groups fans, I think it's
3 only -- if you're on some kind of email notification that you
4 get to find out about these meetings.

5 The other two, in fact, I also ask if we can have
6 these meeting agendas online, so that people are aware
7 what's, you know, going to be discussed about, and previous
8 meeting minutes as well.

9 **MR. EISENBERG:** This is Paul Eisenberg. Can I just
10 provide a quick comment to that? Because I went on OAH's new
11 website, and on the right-hand side of the page was an actual
12 link, although, it's small. The font size for some of us
13 that are a visually challenged as we get older, those
14 probably could be a little bit bigger. But I actually did
15 see it and clicked on it, and that information was there.

16 **MS. CHEN:** And also if the flyer can talk about
17 more about what the meeting is about. I think -- I did pass
18 around this flyer to other people that I know about, and they
19 didn't -- we really -- I mean, this is my first time at the
20 meeting, so I really didn't -- wasn't clear about what this
21 group is and that sort of --

22 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. The only
23 thing I would say is that the -- there are two documents.
24 One is sort of the general notice of the meeting, which may
25 very well be the flyer that you're speaking to, and then

1 there is an agenda. And both of those were published -- I
2 mean, were on the website at least 10 days before the
3 meeting. And also, there are prior meetings where you can go
4 in and find previous agendas and the minutes, or the
5 summaries of the meetings or the OAH written responses to the
6 recommendations.

7 So -- and -- but I certainly do appreciate the --
8 the concern about the -- our need to get the information out
9 to -- to anyone who would be interested.

10 So what I'd like to do is let's move on to finish
11 up the formal part of the agenda, and then we can have public
12 comments on issues that aren't specifically tied to the
13 agenda.

14 In terms of mediation processes, again, there have
15 been requests to change mediators prior to a mediation, and
16 you know, we certainly want to be able to provide a mediator
17 that -- that the parties are happy with and are committed to
18 responding as best we can, given availability. There have
19 been increasing numbers of basically multiple requests for a
20 change of mediators. And again, consistent with a lot -- you
21 know, some of the other comments I've made is it -- again, it
22 can become problematic in terms of, you know, basically you
23 reassign a matter and that mediator isn't satisfactory and
24 you've reassigned it and whatever.

25 Just because of scheduling conflicts I know it's

1 quite common for a party or both parties to request specific
2 mediators, and what I can say is that if we can accommodate
3 those requests, I try to do that, but very often because of
4 calendaring issues, the desired people are not available
5 because they are assigned to hear other matters.

6 So what -- what I am proposing is that similar to
7 peremptory challenges that OAH will commit to respond to sort
8 of a request for a new mediator, you know, once per side, and
9 then anything beyond that, you know, you can submit it, but
10 in terms of calendaring and what not, it may not be possible
11 for us to -- to comply with the request.

12 And hopefully that's a -- sort of a compromise to
13 come up with a mediator that is acceptable to both of the
14 parties and also for us to have judges available to take care
15 of the matters that they need to take care of. Any comments
16 on this? No. Okay.

17 Use of pro tem mediators, and this is mainly just
18 point of information. It's not a change. It's a long-
19 standing practice. Our policy is that if there is a regular
20 OAH administrative law judge available, that that -- that our
21 own ALJ crew will be assigned to handle mediations. Pro tem
22 mediators are only turned to if we do not have the resources.

23 And once -- if a pro tem is initially assigned and
24 then the mediation does not go forward, it's cancelled or
25 rescheduled, basically that mediation, when it comes up to be

1 assigned again, will go to a regular ALJ if one is available.
2 It won't necessarily go to the pro tem.

3 If a mediation is assigned to a pro tem and the pro
4 tem convenes the mediation and then there is another session
5 that the parties scheduled, the pro tem mediator will be
6 assigned to do that because they've already started the
7 mediation and it just makes sense. Again, occasionally the
8 only time the pro tem would not do that is either if the
9 parties request that it be reassigned to somebody else, or
10 occasionally the pro tem may have a scheduling conflict.

11 So -- and our use of pro-terms sort of ebbs and
12 flows based on the calendaring requirements, but I just
13 wanted to clarify there had been some questions and comments
14 and rumors that we were no longer using pro tems and that
15 type of thing, so I just wanted to make it clear. Any
16 questions about pro tem? Comments?

17 One thing. Mediation evaluation surveys. I just
18 want to indicate that as a result of the budget, we ran out
19 of the hard copy of the surveys and so we weren't
20 distributing them. Now that we have a budget and we are
21 refreshing our supplies, those mediation surveys will be sent
22 out to parties who we were unable to give them to you at the
23 mediation. As always, you're encouraged to fill them out and
24 provide all comments to help us evaluate our process and
25 respond to your needs.

1 Also, there had been suggestions about our doing an
2 online survey instead of the old fashioned paper survey. I
3 just wanted to indicate to you that we are researching that
4 possibility, and for a variety of reasons, it's a little bit
5 more complicated than it seems like it should be, but it's
6 certainly something that we are investigating and as things
7 develop we will certainly -- it's just very common. It would
8 hopefully encourage folks to submit the evaluation surveys.
9 Any comments, questions on that item? No? Okay.

10 And finally, training for administrative law
11 judges. I just want to let you know that all of our special
12 education ALJs recently attended a training sponsored by the
13 National Association of the Administrative Judiciary that was
14 held at Pepperdine University. It was -- it -- very
15 excellent training by folks from around the country on -- it
16 included a 40-year discussion of basic due process, 40 years
17 after the landmark decision of Goldberg V. Kelly.

18 It was -- there was an extensive component on
19 decision writing. There was also a component on -- having to
20 do with special education issues, such as notice of
21 insufficiency, and the role of the administrative law judge
22 and credibility and experts.

23 And in addition, we also had a full day of training
24 by professor Mary Culbert from Loyola University Law School
25 Center for conflict resolution on mediation, mediation

1 techniques. She has had experience with special education
2 and mediating involving issues having to do with disability,
3 and so her training was focused directly for us in terms of
4 special education. I think we all found it extremely
5 helpful.

6 We are in the process of scheduling our next spring
7 training, which will likely be held in March or April. As
8 we've done in the past, we are continuing to work with Jim
9 Rosenfeld, professor at the Seattle University School of Law,
10 in terms of putting together a program for us.

11 And there are certain areas that I know that I
12 would like to include some training. And if any of you would
13 have any suggested presenters or resources that we could use,
14 I would invite you to send me an email to let me know. And
15 specifically, I'd be interested in these areas of general
16 disability awareness, impact of disabilities on academic,
17 developmental, functional needs in the educational
18 environment, and the adaptation of general education
19 strategies for students with disabilities.

20 It's not to say -- I know -- what I can say is that
21 we have had training in all these areas in the past, but I'm
22 certainly looking for additional training in these areas and
23 would certainly welcome any suggestions or comments
24 concerning presenters.

25 **UNKNOWN FEMALE:** Excuse me, would you repeat those

1 last two?

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure. I'll go
3 through them again. Disability awareness, and then the
4 impact of disabilities on academic, developmental and
5 functional needs of the student in the educational
6 environment. And finally, the adaptation of general
7 education strategies for students with disabilities. Any
8 comments? Okay.

9 At this time we have a public comments --

10 **MS. GRAVES:** This is Maureen. I actually do have a
11 comment about training. And I'm not sure what you can do
12 about this, but if there's any way to make more clear to the
13 public what training judges have had, I think that would be
14 very helpful because there are background assumption that
15 judges bring in to hearings about what the law is and what
16 the impact of disabilities are that we really have no way of
17 knowing or trying to counter.

18 And, you know, I think one of the frustrations
19 indicated in that comment from the public is that people on
20 the parent/student side have been, you know, reading for nine
21 -- since 1997 about how the law has changed and research is
22 about to play a role in guiding services, and yet we come
23 into hearings and see a kind of remarkable cynicism about
24 what research is and what it says, and we don't know where
25 that's coming from or what to do about it.

1 tapes and the requirement that appears to be listed on the
2 OAH website that also in order to admit a tape you also
3 needed to submit the transcript. And so I was just asking
4 clarification because my experience has that it has not been
5 a requirement. Although, often times it happens, and I guess
6 I just wanted clarification.

7 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure. It's
8 basically up to each administrative law judge how he or she
9 wishes to handle it. There is no policy requiring the judge
10 to handle it in -- in any specific way. I believe, to the
11 extent that the information provided indicates a transcript,
12 I think, was included because there are some judges who in a
13 particular case would require a transcript to come in or a
14 partial transcript to come in, and so I think it was an
15 attempt to try to provide information to the parents that
16 this may be necessary, but I think even in -- in that
17 information it indicates that it's -- it's up to the
18 administrative law judge.

19 So certainly urge -- it's one of the things to
20 bring up at a prehearing conference, if you are planning on
21 using any type of audiotape or videotape, to find out what
22 specific (inaudible) the -- the assigned judge has. Yeah.

23 **UNKNOWN FEMALE:** Should I keep going on?

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure.

25 **UNKNOWN FEMALE:** Okay. "Why -- what the ALJs need

1 to understand and consider at every hearing is that the
2 system as it is set up is patently unfair and stacked against
3 parents and children. As long as there is unequal access to
4 counsel, unequal access to experts, unequal access to
5 witnesses, unequal access to even observing our children in
6 their special education programs, the system is (inaudible).
7 Teachers, even if they agree with the parents about what is
8 most appropriate for the education child, rarely side with
9 the child or parents for fear of retaliation and
10 reassignment. They're not going to testify against people
11 who write their paychecks. How can parents be expected to
12 compete against a system that is designed to be able to use
13 endless amounts of taxpayer money to fight us? We have to
14 spend our own money. Districts can spend as much as they
15 want to, and because it's not their money, don't care. They
16 don't care if they are spending \$80,000 of taxpayer money to
17 deny \$15,000 worth of service to a child. It is an insane,
18 unfair system. Ax murderers are guaranteed right to counsel,
19 yet parents of children with disabilities who are seeking
20 compliance with state and federal disability laws are not.
21 When are we going to go back McGeorge School, which is -- was
22 fair to parents?"

23 The next comment. "We have a school district who
24 says no to everything, even when it does not cost money. And
25 this is their policy, therefore, many people have and are

1 going to due process in which the kids get the -- the
2 services, and then the taxpayers moneys are spent on costly
3 attorney fees. For example, I just accompanied a mother to
4 an IEP in which her bought was switching from a 504 Plan to
5 an IEP. She has very slow processing speed, seventh
6 percentile, among other things, so she needs accommodations.
7 The district gave her nothing. She asked for more time on
8 assignments and tests, no. She asked for yellow transparency
9 overlay, which cost approximately 30 cents, which the
10 district's assistive technology person said significantly
11 helps her in reading, as shown through their assessment one
12 and a half years ago, in which she has had an accommodation
13 or 504 Plan. The district said no. Now she just retained an
14 attorney for one dollar, since the family is low income, and
15 she is taking them to due process, which obviously is the
16 only way she can get any type of services or help. What can
17 we do as parents in this district to solve the district's
18 policy problem?"

19 The next comment. "What do you see as the impact -
20 - impact of The Governor veto on 3632 funding on the IEP
21 process and schools' obligations? How should schools respond
22 to the possible changes in the funding or the mandate for
23 mental health services provided under an IEP?"

24 I actually have one from my firm.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

1 **UNKNOWN FEMALE:** Just a question in terms of
2 whether -- how does OAH deal with court holidays that are not
3 recognized by OAH, and how do they count?

4 So for instance, I guess Columbus Day is an example
5 of a court holiday but OAH doesn't recognize it, and so how
6 does that count toward time -- toward timelines?

7 Second one, furlough Fridays. Are they business
8 days, regardless of whether OAH is working or not in terms
9 of, again, count the timelines?

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** Actually, both of
11 those are related in terms of counting. It is my
12 understanding that if we -- if OAH is up and running, as we
13 were on Columbus Day, that we counted that as a business day.
14 Furlough Fridays were also counted as business days, even
15 though we were not.

16 I guess what I would say to all of this is, to the
17 extent that we are counting things in a manner that -- that a
18 party disagrees with, then as I indicated before, call to me
19 or one of the PJs, or a motion in a particular case would
20 certainly be in order if it has to do with getting a
21 timeframe (inaudible) missing an opportunity to reply to
22 motion or that type of thing, so that's the general response.

23 In terms of the funding problem, one, I -- it's
24 outside our purview in terms of responding to that. I mean,
25 this is not the appropriate forum. I suppose if somebody

1 wants to put that on an agenda item, but again, since the
2 focus of this -- this Committee has to do with OAH's
3 processes and procedures.

4 I mean, that really gets in a very thorny legal
5 question that I'm sure is going to be litigated and resolved
6 some someplace far from this particular room. It's certain -
7 - I mean, it's a great question. It's an interesting legal
8 issue in terms of what effect, if any, it would play in any
9 given decision.

10 But other than that, I don't think -- certainly no
11 guidance that I can provide from OAH. I don't know if any of
12 the other Committee members have anything that they'd like to
13 say in response to any of the public comments we've heard so
14 far?

15 **MR. HARBOTTLE:** Only -- this is Dan Harbottle. In
16 case of the questioner with respect to the AB3632 matter,
17 isn't aware there's a class action pending, and there's a
18 request for an injunction that I'm sure will be resolved one
19 way or the other fairly soon. I'm sure that the attorneys
20 for the parties have made the appropriate motions, and it
21 probably is on calendar in the next few days seeking a stay
22 of the order.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Which court was
24 that filed?

25 **UNKNOWN MALE:** Central District, Federal Court.

1 **MR. HARBOTTLE:** Central District, yeah.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Is there
3 any other web comments?

4 **UNKNOWN FEMALE:** I have no other web comments.

5 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

6 **UNKNOWN MALE:** Just a comment on 3632. Maybe --
7 the decision may be far from this room. Probably the
8 individual is asking -- for mental health asking to be
9 dismissed from cases based on it, so it may come to OAH --

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** No. And I'm aware
11 of at least one case that's currently pending where it is
12 being raised. So yeah, I didn't mean to say that it has no
13 concern. I mean, obviously, it's an issue.

14 And again, to the extent that it's an issue for the
15 parties out there in terms of providing services that are
16 legally required to be provided to students, it's of concern,
17 but in terms of my being -- to provide any legal guidance at
18 this point.

19 I mean, to the extent that it's being raised in any
20 of our matters, obviously, each ALJ, whether it's in a
21 mediation context or in a due process hearing context, will
22 hear what the parties have to say, how the issues are
23 presented, and make whatever findings are deemed to be
24 appropriate within -- based on the law and the facts in any
25 given case.

1 So any other comments? Yes.

2 **MS. AGUILAR:** I have a couple of public comments.
3 My name is Sandy Aguilar, and I'm a parent and an advocate in
4 Rocklin. My first comment has to do with the upcoming
5 trainings. It sounds like the OAH is providing a lot of
6 really good trainings for the ALJs.

7 A question. Any upcoming trainings that are
8 specific to IDEA, and even more specifically, to changes in
9 IEEIA that have come forth in newer case law, case law that's
10 newer than Rowley?

11 **ADMINISTRATIVE LAW JUDGE KOPEK:** What I can say is
12 ordinarily in every training that OAH is involved with
13 organizing, we do have legal updates in terms of new case law
14 and trends, and if there are any changes happening, we do
15 address those.

16 The session that we -- the training that we just
17 went to at Pepperdine was -- although there was a component
18 that was organized by the special education section from the
19 National Association of Administrative Judiciary, the
20 conference itself we didn't have any direct organizational
21 input into.

22 So there were some components that missed -- in
23 that particular case that didn't deal with either legal or
24 case law changes, statutory, regulatory case law changes, but
25 it's certainly that we will incorporate into our training for

1 this coming spring.

2 **MS. AGUILAR:** Okay. I know that there are some
3 presenters, such as Peter Wright, who does like a -- an
4 intensive boot camp on IDEA. I don't know. That's just an
5 example, just for an idea.

6 **ADMINISTRATIVE LAW JUDGE KOPEK:** I appreciate that
7 -- the suggestion.

8 **MS. AGUILAR:** Okay. And the second comment I had
9 had to do when I was looking through the April minutes. It
10 looks like there was a lot of lively discussion in the April
11 meeting by the public. And other than being memorialized in
12 the minutes, how is that information getting disseminated and
13 those suggestions utilized? Is it being shared with the CDE
14 or what is the process for that?

15 **ADMINISTRATIVE LAW JUDGE KOPEK:** We have monthly
16 contract monitoring meetings with the Department of
17 Education, and so we have been providing updates to them in
18 terms of the Advisory Committee.

19 So issues that are presented and raised -- for
20 example, the subpoena issue is something that we have talked
21 to them about, so we certainly share information in that way.

22 The hope certainly is that all of those either
23 attending, or certainly on the Committee, go back and talk
24 with your colleagues and acquaintances in terms of changes to
25 our procedures or recommendations that we are making, so that

1 is another avenue or any -- if there's a particular --
2 another suggestion that you may have, we would certainly
3 entertain that as well.

4 **MS. AGUILAR:** Yeah. I see that there is a lot of
5 discussion about the procedure, and that's great, but I see a
6 lot of substantive -- more global things too, and I was just
7 wondering (inaudible).

8 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, the thing --
9 I mean, one of the things to keep in mind is, in terms of
10 this particular Advisory Committee to OAH, the mission and
11 the goals as I went through this morning are really tied
12 towards, for the most part, the processes and procedures that
13 we use to provide is mediation and due process hearings.

14 Things such as, you know, amendments to the law and
15 that type of thing is certainly not within the purview of
16 this particular Committee. Although, it is my understanding
17 that there are other similar Committees.

18 For example, I believe that there is the department
19 -- California Department of Education has a Special Education
20 Advisory Committee. And it's my understanding that they're -
21 - that they are looking at -- you can correct me if I'm wrong
22 -- looking at some of those larger global issues.

23 So you know, we are open to -- you know, we have
24 public comment. We certainly are interested in all comments
25 across the board, but in terms of what we are actually able

1 to focus on is things that have to do with improving the
2 processes and procedures, providing information about our
3 services.

4 **MS. AGUILAR:** On the training -- I apologize. I
5 need to back up to that. I forgot something. Are any of the
6 ALJs currently visiting any school sites looking at school
7 programs, anything like that? Is that part of the training
8 or plan to be?

9 **ADMINISTRATIVE LAW JUDGE KOPEK:** It has not been a
10 part of the training. It is something that we have talked
11 about. In particular we have talked about wanting to have
12 ALJs being able to observe IEP meetings. We have not yet
13 been able to make that happen, but it is certainly an
14 interest that we have. So you know, we certainly would
15 encourage working with -- with folks in terms of making that
16 happen, but it's -- I think it would be beneficial.

17 **MS. AGUILAR:** Okay.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Before we move on
19 -- we have hands go up, so I appreciate that, but I want to
20 make sure, are there any other comments that you'd like to
21 make?

22 **MS. AGUILAR:** That was it. Thank you very much.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

24 **UNKNOWN FEMALE:** She's first.

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** So Ms. Dalton.

1 **MS. DALTON:** Thank you. I know that we've already
2 spoken about some of the forms that are available, and I'm
3 not sure whether the Office of Administrative Hearings is
4 looking at a process in which parents can expedite enforcing
5 something like an assessment plan.

6 So let's say you're in agreement this should
7 happen. We -- everybody knows it should happen within 60
8 days. It doesn't happen. Is it possible for us to just sign
9 a form and say, "You know, this isn't happening. Please
10 notify them by judge order that the assessment plan has to
11 happen." Or if you have something in your IEP plan that says
12 -- because the California Department of Education may not
13 work with instruction or the individual issues on an IEP.
14 You have to make this dramatic entrance when you come into
15 the court system as to, "They have not appropriately handled
16 this."

17 But we try to be reasonable so that we don't have
18 to go to court, but we also know that the school is not --
19 you know, they're kind of playing the timeline, and the year
20 will go by, and then it's October and something should have
21 been implemented the year before.

22 So are we -- would it be appropriate for there to
23 be a form in which a parent can come in and say, "We've
24 already agreed to this in the IEP. It's already been
25 formalized in the document. It's not happening"? Can a

1 judge just order a mediation settlement, for example, if it
2 hasn't been handled or parts of it or part of the IEP or
3 assessment plans that haven't been followed through on?

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Just in response,
5 it's -- the easy answer is that it's really I can't respond
6 be -- to the extent that you're really asking for legal
7 advice. But it's clear that in terms of OAH, you know, we
8 can conduct mediations and we can do hearings. So in
9 connection with a due process complaint, to the extent that a
10 party files a motion requesting us to issue an order, it is
11 certainly something that we would look at.

12 I can't provide any advice based on the information
13 or render an opinion about whether we would or not, but
14 legally -- for example, we can't even enforce our own orders,
15 so our -- what we can do is very limited. So other than
16 that, I don't really know that I can address the --

17 **MS. DALTON:** I'm sorry. I'm unclear. You can't
18 even enforce your own orders?

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right.

20 **MS. DALTON:** I'm sorry. That's --

21 **ADMINISTRATIVE LAW JUDGE KOPEK:** Right. So when a
22 judge issues a decision and it says whatever is supposed to
23 happen to the student's program, and if for whatever reason
24 it doesn't happen, the parties can't come back to us and say,
25 "We want you to enforce your order."

1 You have to -- you can go to the California
2 Department of Education through the -- the complaint process
3 or you can go to a -- either a state or federal court. But
4 all we can do is issue the decision based on the law and the
5 facts with the issues presented, but we do not have any
6 ability to enforce those orders, which is -- you know, what
7 you're asking is even prior to the hearing.

8 Can we do something to force the parties to do
9 something to resolve the issue? And other than be there as a
10 mediator to facilitate a mediation or to facilitate a
11 settlement discussion, I mean, that's basically -- those are
12 the tools that we have.

13 **MS. DALTON:** Thank you, Your Honor, Your Honor.

14 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure.

15 **UNKNOWN FEMALE:** I have a question. Has OAH
16 considered its -- the -- the need for any process for Section
17 504 plans. (Inaudible) IDEA says that you have to exhaust
18 administrative remedies assisting with the provisions of
19 Section 1415, which is a due process and (inaudible)
20 provisions, as I look at it. And -- and so I'm wondering if
21 there's been any discussion between OAH and CDE about the due
22 process rights of children who have 504 Plans?

23 **MR. HARBOTTLE:** Your Honor, we just -- I think some
24 of us didn't quite catch the last part. If we can have her
25 move closer to the mic?

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Yeah. Do you want
2 to actually --

3 **UNKNOWN FEMALE:** I've been told that I have a small
4 voice, and I do have a bit of a cold, so I apologize.

5 My question is basically about the due process
6 rights of children who have 504 plans. Since 1415(1) of IDEA
7 requires an exhaustion of administrative remedies before the
8 child can take that action into a court, OAH has consistently
9 said that they don't have jurisdiction over 504.

10 We filed a Section 504 complaint against the school
11 district an occasion, and the school district retained an OAH
12 -- an ALJ from OAH to do it independently, to hear that case.
13 So I'm wondering if there's been any discussion between OAH
14 and CDE about those due process rights of children who have
15 504 plans.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** In short, no. OAH
17 doesn't have jurisdiction over 504 plans. And, you know, if
18 a complaint raises a claim under Section 504 or the ABA or
19 other provisions of state or federal law that we do not have
20 jurisdiction over, we will dismiss those claims. And then
21 I'm not going to even begin to weigh on the Doctrine of
22 Exhaustion, but, you know, we -- we do not have jurisdiction
23 over those claims.

24 **UNKNOWN FEMALE:** And -- and --

25 **ADMINISTRATIVE LAW JUDGE KOPEK:** So.

1 **UNKNOWN FEMALE:** -- I know that you don't, but my -
2 - the bigger question is has there been any discussion
3 between CDE --

4 **ADMINISTRATIVE LAW JUDGE KOPEK:** Not that I'm aware
5 of.

6 **UNKNOWN FEMALE:** And -- and -- and for -- for some
7 parents it's a bit of a -- it's a bit of a problem when they
8 get a settlement agreement out of -- out of a due process
9 hearing -- before hearing. They get a settlement agreement.
10 And parents have been asking why can't OAH exercise
11 jurisdiction over those settlement agreements?

12 **ADMINISTRATIVE LAW JUDGE KOPEK:** Simply -- well,
13 it's a little -- the easy answer is because a court said that
14 we don't have jurisdiction to enforce the settlement
15 agreement.

16 **UNKNOWN FEMALE:** That's a court decision out of?

17 **ADMINISTRATIVE LAW JUDGE KOPEK:** It's in the Liner
18 case. I don't have the citation.

19 **UNKNOWN FEMALE:** Was that a Ninth Circuit decision?

20 **ADMINISTRATIVE LAW JUDGE KOPEK:** I don't know. Is
21 it? I believe so, yeah. Off the top of my head, I don't
22 know.

23 **UNKNOWN FEMALE:** All right. Thank you.

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure. Anything --

25 **MS. NEWTON:** I have one.

1 **ADMINISTRATIVE LAW JUDGE KOPEK:** Sure.

2 **MS. NEWTON:** I'm Laurie Newton, a parent and also a
3 Commissioner on the Advisory Committee of Special Education
4 Appointed by the Governor, and we welcome the LRJs to come
5 with us to school site visits, if they want to do school site
6 visits or if they want to attend IEP meetings with us.

7 Myself as an advocate, I do participate in a number
8 of IEPs and I -- locally here. I live in Placer County and I
9 -- so I've been on the Advisory Committee for a number of
10 years. But definitely I would (inaudible) with Ms. Aguilar
11 that ALJs could go to the school sites to see some school
12 programs.

13 Sometimes -- I know in my case with my own child
14 who's 16, his IEP -- he definitely looks different in person.
15 When they see him, they're like wow. So sometimes when you -
16 - judges and -- when they can see that difference, that makes
17 all the difference as well.

18 **ADMINISTRATIVE LAW JUDGE KOPEK:** Well, what I -- I
19 want to make sure I get your contact information before we
20 leave today. Yeah. I really appreciate that offer. Thank
21 you.

22 **MS. NEWTON:** Thank you.

23 **ADMINISTRATIVE LAW JUDGE KOPEK:** Any comfort -- any
24 comments, public comments in Southern California?

25 **MR. HARBOTTLE:** I don't see any hands, Your Honor.

1 Oh, we have one.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay.

3 **MS. MOSES:** I don't know if I can take from here.
4 Can I be heard?

5 **MR. HARBOTTLE:** Sure. You can come up or I can
6 repeat.

7 **MS. MOSES:** I'd rather stand.

8 **MR. HARBOTTLE:** Okay.

9 **MS. MOSES:** Sorry. My name is Robyn Moses, and I'm
10 with the West Orange SELPA, and I just want to add comment to
11 the timeliness of PHC statements. I think it would be of
12 help if the scheduling orders ensure that the PHC is at least
13 four days after mediation, which presently is not always
14 happening.

15 And so I think the parties are reluctant to turn in
16 PHC statements, particularly in those situations where there
17 are no resolution sessions prior to mediating and really
18 understanding a chance to resolve the issues.

19 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you.
20 Very good suggestion. Any further comments?

21 **MS. GRAVES:** This is Maureen Graves. I had brought
22 a little petition here that I'm hoping a lot of people may
23 want to take and get signatures on and give to CDE, asking
24 that they continue putting out the Composite of Laws, which
25 they've been talking about discontinuing for several years,

1 but apparently this year they're really not planning to put
2 it out, except in a web-based version.

3 And I have various arguments in here as to why I
4 think it's really important to have the paper copy, even for
5 those of us who have access to the computer version, know how
6 to use it, and especially for everybody else in the world.

7 So if anybody wants it, please email me and I can
8 send to you. Maureen&maureengraves.com, and anyone here I've
9 got copies.

10 **ADMINISTRATIVE LAW JUDGE KOPEK:** You want to repeat
11 your web address?

12 **MS. GRAVES:** Maureen&maureengraves.com.

13 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Thank you,
14 Ms. Graves.

15 **MR. HARBOTTLE:** That's all from down here.

16 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. Anything
17 else? Any further discussion? All right. Okay.

18 The last item on the agenda is our next meeting
19 date, and we are proposing April 26th as the meeting date.
20 Any objections as to that? Hopefully it's after the spring
21 holidays.

22 **UNKNOWN FEMALE:** Did you look to see whether it's
23 during the LRP conference?

24 **ADMINISTRATIVE LAW JUDGE KOPEK:** Oh, I didn't.

25 **UNKNOWN FEMALE:** I kind of think it's after that.

1 I'm not a hundred -- right around the same time.

2 **ADMINISTRATIVE LAW JUDGE KOPEK:** Okay. I will
3 double check to see whether there's a conflict with LRP
4 conference, since I know some -- many people -- some people
5 may want to attend. But as of now, if you could pencil that
6 in, April 26th.

7 And we will be following the same format. We will
8 have the Northern California people meet here in Sacramento,
9 and the Southern California people meet in Los Angeles and
10 have the webcast.

11 And since we have exhausted our agenda at this
12 point, I would like to adjourn the meeting of the Advisory
13 Committee. I want to thank all of you for your
14 participation. And, again, as I indicated, I look forward to
15 working with you individually, and as a group, to continue
16 improving the OAH Special Education Division. All right.
17 Thank you. And thanks also for people who have been
18 listening and watching us from the webcast. Thank you all
19 very much.

20 **UNKNOWN MALE:** Thank you, Your Honor.

21 **UNKNOWN FEMALE:** Thank you.

22 **UNKNOWN MALE:** Thank you.

23 (Thereupon, the meeting
24 was adjourned.)

25

CERTIFICATE OF TRANSCRIPT

This is to certify that I, Stacy Wegner, transcribed the tape-recorded public meeting of the Special Education Advisory Committee dated October 26, 2010; that the pages numbered 1 through 103 constitute said transcript; that the same is a complete and accurate transcription of the aforesaid to the best of my ability.

Stacy Wegner

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April 15, 2011
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