

**TRANSCRIPTION OF RECORDED MEETING
OF
SPECIAL EDUCATION DIVISION
ADVISORY COMMITTEE MEETING
JUNE 18, 2021**

BOARD MEMBERS PRESENT:

NORTHERN CALIFORNIA:

ROCHELLE HOOKS
DANIELLE CHRISTY
ELIZABETH SCHWARTZ
PAULA SENIGAR
RAMAAH SADASIVAM

SOUTHERN CALIFORNIA:

AILEEN HERLINDA SANDOVAL
ELAINE KOOIMA
ERIC MENYUK
LINDSEY STEINHOLT
MARIANNE GROSNER
VICTOR DURAN

OAH STAFF PRESENT:

BOB VARMA
JENNIFER SAFFOLD

SPANISH INTERPRETER: BRENDA TAMEZ

TRANSCRIBED BY:

MICHELLE JONES

NCCR

Sacramento, California

The record reflects all relevant statements and conversations occurring during the course of the meeting, but is not verbatim. For clarity, superfluous words, phrases, verbal pauses and/or inaudible tones have been eliminated.

DEPUTY DIRECTOR VARMA:

All right. It's 10:00. I think we're ready to go.

Good morning, everybody. My name is Bob Varma. I'm the Deputy Director and I am going to be chairing this meeting of the Advisory Committee.

I'll start with stating the mission, which is that the Advisory Committee is a committee composed of parents, attorneys, advocates, school employees, and other stakeholders, the majority of whom are parents and advocates or attorneys for parents. The Advisory Committee provides non-binding recommendations regarding revisions to OAH's website, forms, documents, procedures, and policies as provided within the regulatory mandate established in the Advisory Committee.

Our goal is to consult with the Advisory Committee in areas such as revisions to OAH's website, forms, documents.

Ms. Saffold, are you going to be letting the person in? Okay.

MS. SAFFOLD:

Yes, Anna is monitoring that.

DEPUTY DIRECTOR VARMA:

Okay. Anna is monitoring. All right.

Scheduling procedures, staff training, and outreach to families and students.

In this world of COVID, the format of this meeting is not in person. We are doing it through Microsoft Teams. The meeting is being recorded, and there will be public comment. The public has a feed. As I understand when we tested it out there is a slight delay. So when we get done with items and get to the public comment section, we'll wait a little bit to allow for the public comment to come in.

The overview and meeting process is that we have an agenda. The agenda has been posted. I'll go ahead and present the agenda items for discussion by the committee. And then if there are proposals by the committee members, a member can make a proposal, we will need a second to ensure that there's interest in the recommendation.

Then, we'll have discussion by the members, wait for public comment, any further discussions, and a vote, if that's where we're at on any particular item.

Let's go ahead and introduce everybody. So, as I said, I'm Bob Farmer. I'm the Deputy Director at OAH. And for OAH, who we have present is Presiding Administrative Law Judge Joy Redmon. Administrative Law Judge Claire Yazigi, Staff Manager Jennifer Saffold, and her staff, which is Anna Brown, an analyst in OAH, and Trinity Durante, who is also an analyst in OAH. And they will be helping us to run this. They've got all the technological knowledge and expertise, and they'll be letting me know when I am making technological mistakes.

And Judge Yazigi will be letting me know when I need to do certain things to follow the Bagley-Keene Act properly. So that's our purpose.

Let's go ahead and introduce the committee members. We'll start with Danielle Christy. If each member can state their affiliation and whether they're from Northern California or Southern California.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Good morning, my name is Danielle Christy. I'm from --

MS. SAFFOLD:

This is -- sorry. This is Jen Saffold. I just wanted to -- someone's mic is not --

DEPUTY DIRECTOR VARMA:

Someone's typing, yeah.

MS. SAFFOLD:

-- muted. We did -- yeah. We do ask that you keep your mic muted unless you're speaking. So if you could maybe do that? There we go. I think we're good to go.

Sorry. Go ahead, Ms. Christy.

COMMITTEE MEMBER CHRISTY:

That's okay,

Danielle Christy. I'm from the Northern California group and I'm a parent and educational psychologist.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Rochelle Hooks?

COMMITTEE MEMBER HOOKS:

Hi, I'm Rochelle Hooks from Northern California and I'm representing schools.

DEPUTY DIRECTOR VARMA:

Okay. And, I believe, Ms. Magy (phonetic) is not here, correct?

UNKNOWN SPEAKER:

Right.

DEPUTY DIRECTOR VARMA:

And, then, we have Ramaah Sadasivam.

COMMITTEE MEMBER SADASIVAM:

Hi, good morning. My name is Ramaah Sadasivam. I am an attorney at Disability Rights California and a parent of a student with a disability. I'm from the Northern California Division.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Elizabeth Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Hello, I'm Elizabeth Schwartz. I'm an attorney with Fagen, Friedman & Fulfrost representing districts from Northern California.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Paula Senigar?

COMMITTEE MEMBER SENIGAR:

Hello, Happy Juneteenth to everyone. My name is Paula Senigar. I'm from Northern California. I'm a parent and a special education advocate.

DEPUTY DIRECTOR VARMA:

Okay. Southern California, Mr. Victor Duran? Going once, going twice.

MS. SAFFOLD:

I don't believe he's connected.

DEPUTY DIRECTOR VARMA:

Okay. Marianne, Ms. Marianne Grosner?

COMMITTEE MEMBER GROSNER:

Hi, good morning. I'm Marianne Grosner from the Southern California Committee, and I'm representing parents. Thank you so much.

DEPUTY DIRECTOR VARMA:

Ms. Elaine Kooima? And I hope I'm pronouncing the names correctly. Please correct me.

COMMITTEE MEMBER KOOIMA:

Hi, I'm Elaine Kooima. I'm with the Southern Committee, and I'm a parent, school nurse, and attorney, and I am a community member. Thank you.

DEPUTY DIRECTOR VARMA:

And, I believe, is Mr. Menyuk here -- Menyuk here? I don't think we got a response from him, but I'm just checking. Okay.

Aileen Herlinda Sandoval? Ms. Aileen Herlinda Sandoval.

COMMITTEE MEMBER SANDOVAL:

Hi, my name is Dr. Aileen Sandoval. I'm from the Southern California committee. I'm a neuropsychologist. I'm a director of clinical services to serve students with various neurodevelopmental conditions and special accommodations.

DEPUTY DIRECTOR VARMA:

Okay. And, then, I don't believe we got a response from Ms. Lindsey Steinholt, but I'm just checking?

COMMITTEE MEMBER STEINHOLT:

Good afternoon. I'm here. Good morning.

DEPUTY DIRECTOR VARMA:

Okay.

COMMITTEE MEMBER STEINHOLT:

I'm here. Lindsey Steinholt. I am an attorney with Atkinson, Andelson, Loya, Ruud & Romo, and I represent public school districts in the Southern California area.

DEPUTY DIRECTOR VARMA:

Ms. Saffold or Ms. Brown, was there anybody else that I did not get on the committee?

MS. SAFFOLD:

No, I believe that is everyone.

DEPUTY DIRECTOR VARMA:

Great.

And we have a quorum so we can move forward.

Let me go over the OAH staff changes since we last -- since the committee last met. We have a new staff member in the Los Angeles office, Sam Patino, as one of the case managers.

We have some changes within the organization. Former Presiding Administrative Law Judge Marion Tully is now the Division Chief Administrative Law Judge, and former Division Chief Administrative Law Judge Margaret Gibson is now a Presiding Administrative Law Judge. And that's the changes within staff for OAH. So not much has -- not a lot of changes have happened since the last meeting.

Let me go over the application period for new members. Currently everybody is, has their term. They're not set to expire. So what we're going to do is we're going to revisit the issue of how people apply in the application process in the fall meeting when we will be anticipating some openings.

As far as expectations of the members to participate in this, so we can all fully benefit, we look forward to your participation, to what you have to offer, and we understand that your time is valuable and scarce.

We expect that you will attend every meeting. There's one in spring and one in fall. If you're unable to attend, please let us know, as you usually do. Failure to attend two meetings, you may be removed from the committee, and it does not have to be two consecutive meetings. It can be two meetings during any time in your term.

We follow the Open Meeting Act, the Bagley-Keene Act, and other than that, I don't think I have anything else but to move on to the agenda items.

First, we're going to discuss the selection of chair for Northern and Southern California for collection of agenda for October 2021 meeting.

Do we have any volunteers from Northern California? Ms. Schwartz, you have your hand up. Okay. Ms. Schwartz is going to volunteer for Northern California. Thank you.

Southern California? Any volunteers?

Okay, OAH will go ahead and collect the agenda items, then.

MS. SAFFOLD:

It looks like Ms. Grosner has offered to volunteer again. Thank you, Ms. Grosner.

DEPUTY DIRECTOR VARMA:

Oh, thank you so much. Great.

MS. SAFFOLD:

It looks like -- Ms. Hooks, did you have a question?

COMMITTEE MEMBER HOOKS:

Were you asking for volunteers for Northern California as well?

DEPUTY DIRECTOR VARMA:

Ms. Schwartz volunteered for Northern California.

COMMITTEE MEMBER HOOKS:

Oh, thank you.

DEPUTY DIRECTOR VARMA:

As to the last recommendations made by the committee, OAH responded to the October 2020 recommendations and they have been posted on the website.

Did any of the committee members have anything they wish to discuss about the responses? Okay.

We'll get to some of the items here. First item is the status of virtual and in-person mediation hearings.

This item was raised by multiple members from both the Northern and Southern California. And the first sub-item is updates regarding options for mediations and hearings following the pandemic, for example, in-person, virtual, and hybrid.

I'll open it up to the committee members. I see that Ms. Schwartz, Ms. Sadasivam, and Mr. Menyuk is not here, but those are some of the members that raised this issue, so I'll open up to you for discussion.

Ms. Schwartz, did you want to go first? Or Ms. Grosner has her hand up. You're muted.

COMMITTEE MEMBER GROSNER:

Did Ms. Schwartz want to go first?

COMMITTEE MEMBER SCHWARTZ:

Go ahead.

COMMITTEE MEMBER GROSNER:

Well, actually, I was trying to catch the last Agenda 12, because I actually had a comment about some of the recommendations, and I raised my hand, but I don't think it was seen.

DEPUTY DIRECTOR VARMA:

Oh, okay. Go ahead.

COMMITTEE MEMBER GROSNER:

Would that be okay to proceed with that?

DEPUTY DIRECTOR VARMA:

Yeah, we can go back. Yeah, we can go back to that.

COMMITTEE MEMBER GROSNER:

Okay. So in review of the responses, the responses stated that a school district is entitled to file a request for due process. And, similarly, a student may file against a school district, but that OAH has no authority or responsibility.

And so my comment to this is that it seems like there's an inequity taking place when school districts have access to public funds and parents don't have that in the matters of litigation.

And of great concern is the fact that children of color are often filed against by school districts and many of those lawsuits have not been brought before the Board. And these minority families, in many cases, they can't afford an attorney, whereas the school district attorneys are funded by taxpayers.

So I just -- my comment is where is the equity in this? And I just, you know, I wonder if OAH doesn't have the authority, how about if OAH sponsors or supports litigation to give OAH authority. You know, can I make a motion for that is my question?

DEPUTY DIRECTOR VARMA:

So what I would recommend, and I appreciate your comment, is this item, my understanding, has been addressed a couple times now, but it comes back as Agenda Item 21 today. And it's, I'll read it as I have it: "Propose alternatives to prevent law firms from misrepresenting to OAH that they've been properly authorized for due process on behalf of district."

Would you -- would it be preferable if you could wait until the we -- it's on -- it's on the agenda and I think that's the item that you want to address. When we get to it, we'll address it then?

COMMITTEE MEMBER GROSNER:

Okay. That's fine. Thank you. I just wanted to make a comment, but thank you. Yes, that would be great.

DEPUTY DIRECTOR VARMA:

I appreciate the comment. Thank you so much.

Okay. So updates on options for mediations and hearings. Ms. Schwartz, anybody? I'll open it up. It doesn't have to be Ms. Schwartz, even though I singled her out first.

COMMITTEE MEMBER SCHWARTZ:

I can just say that the reason why it was proposed was we're hoping to get some information from OAH as a plan moving forward.

DEPUTY DIRECTOR VARMA:

Okay. Anybody else?

COMMITTEE MEMBER SADASIVAM:

This is Ramaah Sadasivam. I think similar to what Ms. Schwartz said, I would like to get more information from OAH about whether virtual mediations will continue,

whether there will be options for virtual mediation and hearings moving forward, or whether we're going to be moving back to in-person mediations and hearings. So just more information would be really helpful. Thank you.

DEPUTY DIRECTOR VARMA:

Anybody else?

COMMITTEE MEMBER SENIGAR:

I would like some clarification about opening the meetings to the public. I know we discussed that last time. I'd like to know what OAH thoughts are moving forward.

DEPUTY DIRECTOR VARMA:

And when you say meetings, do you mean the hearings or do you mean these types of meetings?

COMMITTEE MEMBER SENIGAR:

The hearings.

DEPUTY DIRECTOR VARMA:

Okay.

COMMITTEE MEMBER SENIGAR:

-- for families.

DEPUTY DIRECTOR VARMA:

Okay. All right.

Since Item B is all -- 13B is also related -- it continues and it has to do with Microsoft Teams platform, maybe I can get comments from the committee on that one as well? And then I'll respond to both of them together.

(NO AUDIO FROM 15:22 TO 34:44 DUE TO TECHNICAL ISSUES)

MS. SAFFOLD:

Okay. I believe, hopefully, that officially the audio is situated. I'm picking up sounds as I'm watching the live stream. I do want to give us just another 30 seconds so the live stream can catch up and make sure that it's good to go and that all of these things that I'm saying will be broadcast and then we are good to proceed.

(Pause)

All right. Perfect. I can hear myself speaking. We are good to proceed. The live stream is broadcasting all audio. Sorry about that. Apologies.

DEPUTY DIRECTOR VARMA:

Great. Thank you.

So while we were waiting for things to get fixed, there was an issue raised about whether we were able to get through everything on the agenda and my comment was that we're going to do the best we can. At the end, the committee can discuss if we don't finish it how we want to proceed. So we will get -- we will definitely have that as an item if we don't finish.

Getting back to item 13A and B, I was talking about Microsoft Teams platform and there's a simultaneous translation service issue there as well.

To update the committee, we have been exploring alternatives. It just takes longer than we had thought. We had hoped to have an alternative to Teams available in the time period that was mentioned to you at the last meeting. However, due to how government works and how things process, we do not have everything ready to go for an alternative platform yet.

In the meantime, Teams have been continuing to make improvements on their system. Our end game is to take whichever system allows us to have the best process available to the participants.

So OAH is continuing to work on it. It is not something that we have set aside, and we're always trying to improve on the processes that we do have.

With respect to simultaneous translation services, I think that is a -- that is an issue that has existed since prior to the virtual platform, as we used to have live proceedings where sometimes simultaneous translation was not used and we had delays in translation. It is always our goal to get a translator that can do simultaneous translation.

And, then, with respect to the technology aspect, there are limitations that have been placed upon all of us because of what is available in the platform. What we are hoping for is a platform that allows for a separate channel to be available so that simultaneous translation can occur. And we are testing all those things out.

So we continue to make -- piloting these things. We continue to work on them and we're going to do the best we can. I don't have a final, an end, date of when a new platform, if that's what ends up being the better platform, will be available. The hope is that it will be soon, but we're going to keep working on it.

So that's the update that I have for the committee on those two items.

There was an issue raised on whether we have surveyed the families on hearings and mediations and how the platform is working with respect to -- I think it was with respect to translation services. It might have been more generic with respect to the whole virtual proceedings perspective.

We have not independently surveyed the community for that. The current survey process is the surveys that we have always done following mediations and hearings and so that is what we have used.

I don't know if the committee wants to discuss that item further or has suggestions or recommendations for OAH.

Since Item 13A and B are connected and Item 13C is slightly different, I'm going to stop here and go ahead and see if we have any public comment on Items 13A and B.

MS. SAFFOLD:

We have not yet received any public comment, but I will wait for the live stream to catch up.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

And let you know if any.

COMMITTEE MEMBER STEINHOLT:

This is Lindsey Steinholt. I have, kind of, a related question before we jump into 13C. It's not specifically on the agenda, so I understand if we can't discuss it yet, but I was curious if OAH has a position or process for requesting half-day mediations? I heard some discussion about this among my colleagues and just wanted to see if that was something that OAH could address today.

DEPUTY DIRECTOR VARMA:

Actually, it is Item 18.

COMMITTEE MEMBER STEINHOLT:

Oh, did I miss it?

DEPUTY DIRECTOR VARMA:

Half-day mediations.

COMMITTEE MEMBER STEINHOLT:

Oh, I apologize. That's my fault. Never mind, then.

DEPUTY DIRECTOR VARMA:

That's no problem.

COMMITTEE MEMBER STEINHOLT:

I see that now. Thank you. I apologize.

DEPUTY DIRECTOR VARMA:

Absolutely.

MS. SAFFOLD:

Okay. We have received one public comment. It is Item 13.

"Are we going to have the opportunity for in-person or is everything staying virtual?"

DEPUTY DIRECTOR VARMA:

So it's a public comment. We usually don't respond to it, but I'll reiterate what I said earlier.

Currently, we are using the process we're using, which is the virtual proceedings process. Post-pandemic, as I said earlier, our goal is to provide to the community as many options as we can, as far as hybrid, in-person, virtual. We don't know yet what the final picture will look like, but we are working through to be able to provide the community with as many options as we can.

So that's what I said earlier. I'll reiterate it in case the feed did not work properly and the other participants did not hear it.

Okay. Item 13C, "Updating and accessing OAH special ed orders on website, including search functions of the database."

Did any of the community members want to talk about this? Who had proposed it?

COMMITTEE MEMBER SCHWARTZ:

Yes, I believe I proposed it.

DEPUTY DIRECTOR VARMA:

Who is this?

COMMITTEE MEMBER SCHWARTZ:

On OAH's website, the orders are still not available and say pending. I know that interagency agreement with CDE does require updated orders each month. And so I was hoping we could get a status update.

DEPUTY DIRECTOR VARMA:

Okay.

Anybody else?

Okay. So with respect to orders on the website, we have been going through the orders to find samples on most of the different issues that come up, and then we're going to post those.

There is a process involved since the accessibility statutes came into play that requires us to make them accessible, so we have to first identify the orders, make them accessible, and then we also have to go through the translation process and make sure those are accessible as well.

So it has been a long process. We have been continuing to work on it and, you know, I'm going to call on Ms. Saffold because I was talking to her earlier. She had a time frame, which I don't remember.

But what is our current goal that we're looking at -- that we're hoping for?

MS. SAFFOLD:

We should be able to complete all of the process within the next month.

DEPUTY DIRECTOR VARMA:

Okay. So that's the update we have for the committee. That we're looking at about a month out to get those back on the website. We know they're valuable to you. We apologize for the inconvenience that has been there.

And there are search function issues on the database. We work with our technology folks from Department of General Services to try and improve those. And that's an ongoing process, not just for the orders, but also for decisions and for the other parts, non-special ed parts, where we have to provide documents to the public that are searchable.

So it's a database search issue that we continue to work with the Department of General Services to try and improve.

Any comments from the public on Item 13C?

MS. SAFFOLD:

We have not received any comments. I will wait for the live stream to catch up and let you know.

(Pause)

Okay. We do have one comment so far. It is: "OAH has restated the same position on orders that they will be posted soon for over a year. I'm hopeful OAH will follow through with its promise of one more month before they are posted."

DEPUTY DIRECTOR VARMA:

Great. Thank you.

Okay, Item 14, "Status report on self-help centers mentioned at the last Advisory Committee meeting." I believe these would be the kiosk type self-help centers that we have been discussing.

Anybody from the committee wish to address it or do you just want me to give you the update?

COMMITTEE MEMBER SADASIVAM:

This is Ramaah. I had asked for this item to be on the agenda for today's meeting and so I just wanted a status update on the self-help centers.

DEPUTY DIRECTOR VARMA:

Sure.

So, again, going back to the idea that OAH was already looking at alternative ways to provide our services prior to the pandemic, this would be one of those items.

The idea is to go towards a virtual type of courtroom setting, which would provide kiosks, self-help centers, and we are working through it. As I said, we are working on the Teams platform issues. There is a project in place to work on courtroom technology issues that would include the kiosks for self-help centers.

So it is a long-term project that is continuing to be worked on, and I don't have a specific date by which these will be available.

What I can tell you is that if, in any given case, a party needs help in filing their documents or accessing a virtual proceeding, they can contact us and we will do what we can to help them, including if we need to have them come into the office and use our equipment to be able to access things. We have that ability and we can certainly do that.

So the idea that a self-help center is not already set up and available should not prevent any party from accessing the proceedings that they need to be able to access.

And as we do develop these, we'll update you. We'll let the community know when we have the technology ready to go.

Any comments on that one? Public comment?

MS. SAFFOLD:

None yet. I will wait until the live stream has caught up.

(Pause)

And so we have received one comment. They didn't identify the agenda item, but I will go ahead and read it now, as it appears that they may be intending for it to be part of this discussion. It says:

"Hello, I am a parent in Southern California and my son/family was sued by our school district without Board knowledge or approval during the COVID-19 pandemic. It was obvious our district outgoing special ed

director and the for-profit law firm used their ability to sue our family in secrecy of the public to try and intimidate our family as we asked for our child's rights to FAPE.

When OAH takes the position that this is not within their purview, they take the position that the districts and lawyers who do this to the families, like mine, are invincible and they will continue to bully families and children and deny them their constitutional and educational rights. Hiding the misuse of public funds from the public and those elected officials that serve them.

Please reconsider your position. Not every family, especially those like mine, who are families of color and lower middle class that don't have as many resources to fight these large firms and districts, will be able to continue to ensure their child achieves their rightful education when they're being fought at every ask or turn.

So it appears that that is actually more applicable to Agenda Item --

DEPUTY DIRECTOR VARMA:

Twenty-one?

MS. SAFFOLD:

-- 21. Yeah.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

We do have one other comment in relation to virtual mediation hearings. It is:

"Can someone post a response to the virtual mediation hearing question?"

It appears that someone is still having audio issues. What we will do is we will be able to post a recap for them, so.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

I haven't received any other comment and we are caught up to the live stream, so.

DEPUTY DIRECTOR VARMA:

Okay.

Item 15, "Timely posting of OAH Advisory Committee meeting transcript to OAH website."

This was, I believe, yours, Ms. Sadasivam.

COMMITTEE MEMBER SADASIVAM:

Yes. Thank you, Your Honor.

So I had wanted to raise this to the committee because I am unclear as to how long OAH should take to post the transcript of the committee meetings. I know that we last met in October, and I don't think that that transcript of that meeting was posted for several months, and I think that it's an issue of transparency and openness.

I know that some members of the public are unable to attend these committee meetings when they occur; and so having access to the transcript, and having a timely access, to the transcript would be really, I think, important to ensure that our public has information about what's happening at these committee meetings, what's being discussed, and ensuring that this process is transparent and open for everyone.

DEPUTY DIRECTOR VARMA:

Okay.

Anybody else?

COMMITTEE MEMBER SENIGAR:

Yeah, I had an agenda item that didn't make it, but it actually links to this topic about transparency.

I wanted to know who are the OAH response team members? When we make recommendations and it goes to OAH, who are those members that comprise that response team, that either accept or reject the committee's proposals?

DEPUTY DIRECTOR VARMA:

Okay, Ms. Grosner? Grosner, sorry.

COMMITTEE MEMBER GROSNER:

Thank you, Your Honor. No, I was just going to say the same thing.

Normally, you've been providing the transcripts and it's still not available as of today and it would have been really helpful for this meeting. So that was my other comment. Thank you.

DEPUTY DIRECTOR VARMA:

All right. So, with respect to agenda items, the agenda items that we accept are ones that have to do with the mission of the Advisory Committee, which is to advise us on the procedures with respect to mediations and due process hearings. So those are the agenda items we accept.

With respect to the Advisory Committee transcript, the meeting transcript, you know, I will accept responsibility for that, that we did not get it up on time this last time. That was -- that was our fault; and I apologize to the committee and the public for that.

I am open -- there is -- to our knowledge, there's nothing out there that says by when these things have to be posted. If the committee would like to make a recommendation, please feel free to discuss it.

COMMITTEE MEMBER SADASIVAM:

This is Ramaah. I do think that we should, as a committee, make a recommendation to OAH that the transcripts be posted timely, perhaps within 30 days of the committee meeting, so that members of the public have access to the transcript.

Because right now it seems like there's no timeline and, if the transcript is not posted from the October meeting, you know, it becomes -- you know, to me it's very

concerning that it's been more than six months and that transcript is still not posted. And there's no timeline or deadline for the transcript to be completed and available to the public.

So I would like, I guess, to propose a recommendation that within 30 days of a committee meeting that OAH transcribes and posts the transcript of a committee meeting and makes it available on OAH's website.

DEPUTY DIRECTOR VARMA:

Okay.

Anybody wish to second that?

COMMITTEE MEMBER GROSNER:

I second it. This is Member Grosner. I second it.

DEPUTY DIRECTOR VARMA:

Thank you.

Anybody wish for further discussion on that item?

All right. Well, let's wait for public comments, see if there's any public comment on it, and then we can do a vote. Somebody has their hand up.

Oh, Judge Yazigi?

ALJ YAZIGI:

Hey, I'm sorry. May I know the member's name who made the recommendation?

COMMITTEE MEMBER SADASIVAM:

This is Ramaah Sadasivam. I made the recommendation.

ALJ YAZIGI:

Thank you.

DEPUTY DIRECTOR VARMA:

And then Member Grosner seconded it.

Ms. Saffold, let us know if there's any public comments.

MS. SAFFOLD:

We have not received any public comments on this agenda item and the live stream is caught up.

DEPUTY DIRECTOR VARMA:

Okay. So OAH will respond to that recommendation and we will let you know about the 30 days.

Item 16, "Public to provide verbal and/or written comments via chat during the Special Education Advisory Committee meetings." I think this is Ms. Senigar. This is your item?

COMMITTEE MEMBER SENIGAR:

Yes. During the previous meetings, parents expressed concerns about having their comments limited to the chat. And I would like for OAH to allow time for families to make public comments verbally.

DEPUTY DIRECTOR VARMA:

Any other discussion on that item?

COMMITTEE MEMBER SADASIVAM:

This is Ramaah. I have a clarifying question. How can members of the public provide comments? Is it through the chat only?

DEPUTY DIRECTOR VARMA:

Currently, I believe it's through the Q&A link, question-and-answer link.

Is that correct, Ms. Saffold?

MS. SAFFOLD:

Yes. They have access to the link through the live stream, and we also put that in the information that we send out to those who subscribe to our Listserv, and it's also on our website in a couple different places.

DEPUTY DIRECTOR VARMA:

Okay.

Judge Yazigi, did you still have your hand up?

ALJ YAZIGI:

My apologies.

DEPUTY DIRECTOR VARMA:

Oh, you're right. I missed it. Let's go back to Item 14 -- Item 15. You're right. We actually didn't take a vote. So let's -- I'm rusty on this. It's been a while since I did one of these. Let's go ahead and vote on Item 15, which is the proposal to have the Advisory Committee meeting transcript posted in a timely manner; within 30 days was the timeline that was suggested by or recommended by the committee.

We'll go ahead and do a roll call vote. We'll start in Northern California, Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Southern California, Mr. Duran? I can't remember. Was he here? I don't know.

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Herlinda Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

Did I miss any committee member? Okay. It's unanimous yes vote, so we will respond to that recommendation.

Thank you, Judge Yazigi.

All right. Going back to Item 16, public to provide verbal or written comments during via chat.

So this is not because we don't want to have verbal comment. We used to, when we held the meetings in public, in person, and it's a technology issue. We have to be able to have the meeting proceed in a time -- in a proper manner and be able to get input of the members, as well as the community.

So currently we are using the features that Ms. Saffold mentioned and, you know, I believe we are getting the public comments that we need. I don't know if we are. If the item is being raised because one of the members feels that the public is not getting to provide the input during the public comment section.

So that's our response. I'm open to further discussion from the committee members.

COMMITTEE MEMBER SENIGAR:

I would like to make a recommendation that we provide time, limited time, for the public to make comments during our meetings -- verbal comments, where we can open their mics.

DEPUTY DIRECTOR VARMA:

And do you have -- can you specific -- can you phrase it in the way that you want the recommendation to be considered? Do you have a, for example, a particular time in the meeting that you would suggest that that would happen? The length of time that you would suggest? So that we have, as specific, a recommendation as we can get.

COMMITTEE MEMBER SENIGAR:

I would say at the end of the meeting or towards the end of the meeting when they've had a chance to listen to the whole meeting and maybe limit it to best practices. I don't know what that is. I would say at least three minutes.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Grosner?

COMMITTEE MEMBER GROSNER:

I just wondered if I can get clarification. Is that three minutes in total or three minutes per person if you're going to offer that at the end of the meeting?

COMMITTEE MEMBER SENIGAR:

It would be per person.

COMMITTEE MEMBER GROSNER:

Okay. I do like that idea of offering it to the public because I know a lot of people, the members of the public, do wish to actually speak it verbally. They feel like they really can express what they need to express and it's a little more personable. So I do like that recommendation.

DEPUTY DIRECTOR VARMA:

Okay. So let me see if I can phrase it as you would like. The recommendation is - from the committee is for the -- for OAH to allow for public comment when we're doing virtual meetings through a verbal -- that's actually poorly phrased. Let me rephrase it. An opportunity at the end of the meeting for there to be verbal comment from the public, up to three minutes per individual.

Is that a correct characterization of the recommendation?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Okay.

Do we have a second?

COMMITTEE MEMBER SANDOVAL:

I second.

DEPUTY DIRECTOR VARMA:

And who is that?

COMMITTEE MEMBER SANDOVAL:

Sandoval.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

We do have a public comment on this agenda item when (inaudible) --

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

-- for that.

DEPUTY DIRECTOR VARMA:

Go ahead.

MS. SAFFOLD:

Okay. We have one comment. It is:

"I want to comment on this. Public wants to make public comments by phone or Teams. We want our voice to be heard."

DEPUTY DIRECTOR VARMA:

Any further discussion from the committee members on this item?

Okay. Let's go ahead and take the vote then. We'll start with the same roll call we had earlier.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

Okay. That's unanimous and OAH will go ahead and respond to that.

Okay, next, Item 17, "Time for parties to respond to motions."

Ms. Schwartz, I think this was an item that you raised. Did you want to address it?

COMMITTEE MEMBER SCHWARTZ:

Yes, Your Honor.

You know, OAH's website states that parties must respond to motions within three days. I know anecdotally and I'm hearing from colleagues that at times OAH will issue orders before the three days is up and then in the order at times it states that a party never responded, even though it was before the three days.

So I would recommend that there's a requirement that OAH waits three days before an order can be issued unless all parties have responded.

DEPUTY DIRECTOR VARMA:

Okay.

Any other committee member wish to address that issue?

MS. SAFFOLD:

Before we move to that, we did receive one more comment --

DEPUTY DIRECTOR VARMA:

Oh.

MS. SAFFOLD:

-- on the public chat that just came through.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

It says: "Please provide five minutes as some speak slowly."

And, then, we had one more come in. It says: "It would be helpful to make public comments ourselves. It is a little difficult to navigate the comment Q&A section while also watching the live feed."

DEPUTY DIRECTOR VARMA:

Okay. We already moved on from that item, but I'll go ahead and go back to it and see if the committee members had any further comments based on the public comments.

And Mr. Menyuk is here. Good morning. Can you hear us?

COMMITTEE MEMBER MENYUK:

Who me?

DEPUTY DIRECTOR VARMA:

Yes.

COMMITTEE MEMBER MENYUK:

Yes, I can hear you now.

DEPUTY DIRECTOR VARMA:

Great.

COMMITTEE MEMBER MENYUK:

Hi, everybody. (Inaudible), Your Honor, I've been trying to log on for about an hour or so. So I apologize.

DEPUTY DIRECTOR VARMA:

Okay, and that's what I was just going to confirm and make sure that you were not present and that I had not been skipping over you. So okay. Great.

COMMITTEE MEMBER MENYUK:

Yes.

DEPUTY DIRECTOR VARMA:

All right. Going back to Item 16, anybody have any further comments on that one?

Okay. We're getting some feedback. Mr. Menyuk, could you mute your mic?
Thank you.

Okay. With respect to the issue on response to motion as to time to respond, Ms. Schwartz is suggesting that OAH not issue an order until three days have passed, correct?

COMMITTEE MEMBER SCHWARTZ:

Yes, Your Honor, in accordance with OAH's website.

DEPUTY DIRECTOR VARMA:

Okay.

Any committee members have any further comments on that or is there a specific recommendation?

COMMITTEE MEMBER SCHWARTZ:

Your Honor, I would recommend the requirement that OAH wait the three days before they issue an order unless all parties have responded.

DEPUTY DIRECTOR VARMA:

Okay.

Anybody wish to second that recommendation?

COMMITTEE MEMBER HOOKS:

This is Rochelle Hooks. I second.

DEPUTY DIRECTOR VARMA:

Okay.

So Ms. Schwartz made the recommendation. Ms. Hooks seconded it.

Discussion by the committee members on the recommendation? And, at the same time, we'll be looking for public comment on it.

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Hi, Your Honor. Thank you. I just sent -- so for clarification, this is -- it's already posted on the website that they should wait three days, but it's not necessarily happening in all cases. Is that what -- this is going on? Okay. Thank you.

DEPUTY DIRECTOR VARMA:

Ms. Saffold, do we have any public comment?

MS. SAFFOLD:

Yes, we have received public comment.

The first comment is Item 17:

"OAH's website says three days to respond to motions. The scheduling order that comes out after a due process complaint has been filed says three business days. OAH should ensure consistency between the website and scheduling order, as well as complying with its own rule, whichever is decided on three days or three business days."

Another comment is:

"It would be useful to see a procedure in which urgent motions can be marked as such, with good cause, why they are urgent, with known shorter response, with all other motions with three days for response."

Let's see. "I would -- clarification on whether there would be three business -- three days or three business days."

And we have a couple other comments in relation to the public comments. Would you like this to be read now or saved for the general comment section?

DEPUTY DIRECTOR VARMA:

They're not on this item?

MS. SAFFOLD:

Correct.

DEPUTY DIRECTOR VARMA:

Yeah. Let's wait until -- let's wait until the public comment section, then, or if they relate to a particular item later, we can address it there.

MS. SAFFOLD:

Okay. That is all that we've received thus far. I would like to wait a few moments for the live stream to catch up all the way and then I will let you know if we've received anything else.

DEPUTY DIRECTOR VARMA:

Okay.

In the meantime, I think, based on the comments we got from the public, was there further discussion or any desire to change the recommendation?

COMMITTEE MEMBER SCHWARTZ:

Yes, Your Honor. I would like to revise the recommendation to a requirement that OAH wait three business days before an order can be issued unless all parties have responded, or in the alternative -- or, additionally, to establish a procedure for urgent motion.

COMMITTEE MEMBER HOOKS:

This is Rochelle Hooks. I second that.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

Okay. We are caught up from the initial discussion. I think we should wait for the modification to also broadcast. I will let you know if we receive any comment then.

DEPUTY DIRECTOR VARMA:

Okay.

(Pause)

MS. SAFFOLD:

Okay. No further public comments have been received and we are caught up.

DEPUTY DIRECTOR VARMA:

So, Ms. Schwartz, you're amending your recommendation that OAH wait three business dates to respond to a motion unless all parties have filed their responses and set up a procedure for urgent motions. Is that correct?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

And was there a second to that?

COMMITTEE MEMBER HOOKS:

Yes, Rochelle Hooks.

DEPUTY DIRECTOR VARMA:

Thank you.

Any further discussions before we put it up for vote?

COMMITTEE MEMBER SENIGAR:

I just have a clarifying question. What is the current policy? Is it business days or is it calendar days?

DEPUTY DIRECTOR VARMA:

We typically wait business days. That's what we do. You know, there are times when a motion is urgent and has to be addressed.

What I can tell you from my own experience is that there are times when parties tell us a motion is urgent and nothing has prevented a party from putting something in their motion saying this thing is time-specific and this is why. I think that only helps OAH to evaluate the motion, if that's put in there, if there is an urgency to a motion. So yeah.

MS. SAFFOLD:

We have one additional public comment. "I think that three business days allows for urgency in motions. I don't think we need two processes."

DEPUTY DIRECTOR VARMA:

Okay, and I appreciate the public comment, but Ms. Schwartz gets to frame her recommendation as she wishes, and it has been seconded. So that's what we're going to put up to vote.

And let's go ahead and do -- any other comments on this before I do a roll call? No? Okay.

Ms. Christy, your vote?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

I think I'm just going to say, are there any no votes next time around we take a vote on something? Okay. It's unanimous, so we will -- OAH will respond to that recommendation.

Next item, [18] "Half-day mediations".

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes. My understanding is that some requests for half-day mediations are being granted, while others are being denied.

So I would recommend that OAH permit half-day mediation.

DEPUTY DIRECTOR VARMA:

Okay.

Discussion from the committee members?

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yeah. I guess my question for the courts is, are you saying that they permitted when requested or -- and that's it? It's should be up to the parties, you know, granted automatically. I guess I'm just confused with what you're asking for. So I love the half-day mediations, but I just want to clarify.

COMMITTEE MEMBER SCHWARTZ:

Great question. Yes. My recommendation would be that OAH permit half-day mediations when requested by the parties. I think there are times where a full-day mediation is not required, but my understanding is that sometimes requests for a half-day mediation have been denied.

COMMITTEE MEMBER SENIGAR:

I have a clarifying question. What is the current policy for half-day mediations?

DEPUTY DIRECTOR VARMA:

So the current policy is there's a different policy with respect to LA Unified School District than all others. Due to the volume and due to the way things are worked with LA Unified, they get half-day mediations as they're setting two mediations a day; and I think it can go up to -- I forget how many slots. But the volume of LA Unified makes it a different way to set things.

Beyond that, it's up to that particular case. It's case-by-case. So that's the policy that we have. We don't have a blanket "no half-day mediation"/blanket "half-day mediation" policy.

And I can tell you that if there was a case for LA Unified where the parties felt they needed a full day mediation, we'd obviously look at that.

So, you know, that's how the procedure works currently to be able to calendar all the cases and timely process them.

Mr. Menyuk, you had a question?

COMMITTEE MEMBER MENYUK:

Yeah, really quickly, Your Honor. Thank you very much. Who makes that decision, you know? If the parties request a full day at LAUSD, or other districts, they request a half-day, who's making that decision to either grant or deny?

DEPUTY DIRECTOR VARMA:

As I said, it's case-by-case. It would be reviewed by the presiding ALJ.

COMMITTEE MEMBER MENYUK:

I'm sorry. Thank you. I didn't mean to raise my hand, so.

DEPUTY DIRECTOR VARMA:

Sure.

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Are there specific considerations or guidelines that are used when deciding when to deny a half-day mediation?

DEPUTY DIRECTOR VARMA:

There are no set -- there's nothing that we have as a policy per se. It's a case-by-case and we go -- we go with what is happening in that particular case and that particular time period.

Further discussion on this item?

COMMITTEE MEMBER MENYUK:

Yes, Your Honor, if I may. It's hard because, you know, mediations are, of course, confidential and, in order, to then make a decision on whether it should be full-day or half-day, then other people like the presiding judge, besides the mediator, are now getting involved in the mediation process. And it just seems that could run afoul of the whole notion that the mediation is supposed to be confidential, and only the mediator really has knowledge of what's going on there and who (inaudible) anyone else. That's my comment.

DEPUTY DIRECTOR VARMA:

Sure.

COMMITTEE MEMBER MENYUK:

I don't know what the answer is to that, Judge, but that is a comment that I have.

DEPUTY DIRECTOR VARMA:

Okay. Well, in discussion of that -- of that topic, what I can tell you is that the presiding ALJ is setting the calendar, so they're already looking at the case.

With respect to any communication on the substantive aspect of a mediation, we have some pretty strict guidelines about making sure that we wall off the mediator from everybody else and we maintain the confidences of the mediation. We do a conflict check when we calendar things to make sure that somebody that has -- is the mediator is not getting any of the aspects of that case.

You know, I can tell you from history, there are times when a case involving a particular student, a second case comes up within a certain time period, and, you know, we look back to make sure we're not going to have a conflict with who gets to handle the case because they may have mediated the case before.

So those -- we have a process that we go through to ensure that we don't violate the confidences of mediation.

So, Ms. Schwartz, to reframe your -- or frame your recommendation, it is that you would like a policy that if both parties request a half-day mediation, OAH automatically grant it?

COMMITTEE MEMBER SCHWARTZ:

Yes, Your Honor.

DEPUTY DIRECTOR VARMA:

Anybody second that --

MS. SAFFOLD:

We have received a public --

DEPUTY DIRECTOR VARMA:

-- motion? Okay. Let me --

MS. SAFFOLD:

Sorry. We have received a public comment.

DEPUTY DIRECTOR VARMA:

Okay. All right. We can listen. Let me just ask if there's a second and then we can go to the public comment.

Mr. Menyuk? You second it? Okay.

COMMITTEE MEMBER MENYUK:

I do.

DEPUTY DIRECTOR VARMA:

Public comment?

MS. SAFFOLD:

"If OAH is providing on a case-by-case basis, there should be set criteria."

That's all we've received so far and the public stream is caught up to this point.

DEPUTY DIRECTOR VARMA:

Judge Yazigi, is it easier if I just ask if there are no votes or do you want me to do the roll call?

ALJ YAZIGI:

Roll call, please.

DEPUTY DIRECTOR VARMA:

Okay.

ALJ YAZIGI:

Thank you.

DEPUTY DIRECTOR VARMA:

All right.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

May I hear the proposal one more time?

DEPUTY DIRECTOR VARMA:

Sure.

Ms. Schwartz, did you want to state it?

COMMITTEE MEMBER SCHWARTZ:

My recommendation is that OAH grant all half-day mediations that are requested by both parties.

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

Okay.

You know what, Ms. Schwartz, I'm going to go backwards for a second and offer you a proposal. As it's currently framed, it says both parties. What if it's a case with multiple parties? Do you want to change your proposal to say all parties? I just thought of that.

COMMITTEE MEMBER SCHWARTZ:

Thank you for thinking of that, Your Honor. Yes. I would like to change it so that it says all parties.

DEPUTY DIRECTOR VARMA:

Okay. So the proposal is if all parties request a half-day mediation, OAH grant it. Is there a second to that one?

COMMITTEE MEMBER MENYUK:

I second it, again.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk, again.

So is it -- is the committee okay with our voiding the first vote that we just had in the first proposal that Ms. Schwartz made and we'll go with the second proposal?

I see faces nodding.

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Sorry, Your Honor, I just had a quick question. All parties, I mean, there's -- what other parties would there be besides the district and the student? I'm just curious.

DEPUTY DIRECTOR VARMA:

It's (inaudible) -- it's the use of the word "both." So you could have it where there's multiple districts. So there's -- now you have three parties. You could have it where there's a charter school. So now there's more than one party, more than two parties. It's the -- it's the usage of the word "both."

COMMITTEE MEMBER GROSNER:

Thank you.

DEPUTY DIRECTOR VARMA:

That's it.

All right. Mr. Menyuk has seconded it. So we'll do the roll call, again.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

Okay, unanimous vote again. OAH will respond to that.

We are at about an hour and a half into this. Is everybody okay to keep going? Does anybody need a quick break? No? All right. Everybody's keeping going. All right. Item 19 --

MS. SAFFOLD:

Before we proceed, Your Honor?

DEPUTY DIRECTOR VARMA:

Yes?

MS. SAFFOLD:

I'm sorry. There's one more public comment that -- we need to, you know, build in the public comment timing.

DEPUTY DIRECTOR VARMA:

Sorry.

MS. SAFFOLD:

One more comment. "Criteria needs to place what happens when there is a disagreement."

That was the last comment we received and the live stream is caught up to the voting, so.

DEPUTY DIRECTOR VARMA:

Okay.

COMMITTEE MEMBER SENIGAR:

May I make a comment about that, Your Honor?

DEPUTY DIRECTOR VARMA:

Yes.

COMMITTEE MEMBER SENIGAR:

I think that if we don't have a criteria that it's so subjective and it's so open to bias that there is an issue there. So can I make a recommendation for a policy procedures?

DEPUTY DIRECTOR VARMA:

Well, the recommendation currently is that it wouldn't need a criteria under this recommendation because the recommendation is that it's automatically granted if all parties agree. That's the recommendation that's being made.

COMMITTEE MEMBER SENIGAR:

Okay.

DEPUTY DIRECTOR VARMA:

So, yeah. It's a -- it's a -- there's no analysis to be done if all parties agree; the request is that the half-day mediation be granted, so.

COMMITTEE MEMBER SENIGAR:

Okay.

DEPUTY DIRECTOR VARMA:

Okay. Item 19, "Process and timing for assigning ALJs to due process cases."

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes. I would recommend that OAH establish a procedure to assign an ALJ to a due process matter once the complaint is filed, so that an ALJ -- one ALJ is responsible for reviewing all motions and then conducting the hearing. I believe it's in the best interest of judicial economy rather than have multiple ALJs reviewing filings and ruling on various motions throughout the case.

My understanding is that the interagency agreement only requires OAH to assign a judge five business days before the hearing, but my recommendation would be that that occurs sooner and as soon as the complaint is filed.

DEPUTY DIRECTOR VARMA:

Okay. Discussion from committee members.

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yeah. The issue that I have with that is, you know, what happens if, you know, the whole papering of a judge, I mean, if you don't want a judge being assigned.

If that happens, like within five days, you know, you may not -- you may not know, you know, whether or not that's the judge you want ruling and hearing, especially if you're going to go to mediation and have a different judge mediate the matter.

You know, a lot of issues go into play in determining, you know, what judge a party wants to hear their case; and that includes, you know, who the mediator is going to be.

So I'm not sure that I would like it to be assigned that early. I certainly understand the benefits of having the same judge ruling on motions and things like that, but I do have a problem with getting that assigned five days after the complaint is filed.

That's my comment.

COMMITTEE MEMBER SENIGAR:

I have a clarifying question. How would that benefit the families in this process?

COMMITTEE MEMBER SCHWARTZ:

I think it benefits all parties, in that there it is establishes, hopefully, some more consistency and that it would be the same ALJ hearing all of the orders.

I think as I mentioned judicial economy considerations; that rather than have a new ALJ reviewing all filings each time a motion comes in, that instead it would be one ALJ that's overseeing the entire case.

Of course, if there is a request for mediation, then it would be a different ALJ assigned as the mediator. But I believe it benefits all parties.

DEPUTY DIRECTOR VARMA:

Okay. And let me just jump in for a second.

Mr. Duran, are you here? I saw you were in the lobby.

COMMITTEE MEMBER DURAN:

Yes, sir.

DEPUTY DIRECTOR VARMA:

Great. So just to catch you up to speed. We are on Item 19, which is the process and timing for assigning ALJs to due process cases.

And the discussion currently going on is with respect to Ms. Schwartz's recommendation that OAH assign one ALJ to the case when it is opened and that ALJ handle all motions and all matters all the way to hearing.

So that is the discussion that is going on. I just want to bring you up to speed and I'll let the committee members continue discussing the item.

COMMITTEE MEMBER DURAN:

Thank you so much.

DEPUTY DIRECTOR VARMA:

Thank you.

COMMITTEE MEMBER SADASIVAM:

This is Ramaah. I have a question for Ms. Schwartz about how this recommendation interplays with the current --

DEPUTY DIRECTOR VARMA:

I can -- I can barely hear you.

COMMITTEE MEMBER SADASIVAM:

Oh, I'm sorry. Can you hear me now?

DEPUTY DIRECTOR VARMA:

There we go. That's better. Yes.

COMMITTEE MEMBER SADASIVAM:

Okay. Okay. Sorry about that.

So I have a clarifying question for Ms. Schwartz. How would this recommendation interplay with the parties' right to peremptorily strike a judge before the Prehearing Conference?

COMMITTEE MEMBER SCHWARTZ:

With my recommendation, I don't anticipate or foresee it causing any issues with the peremptory challenge timeline. So that would still be an option.

DEPUTY DIRECTOR VARMA:

Any other comments from the committee members or questions or discussion?

COMMITTEE MEMBER SADASIVAM:

This is Ramaah, again. I think that in order for me to feel comfortable with this recommendation, I think we need to carve that out.

Because the way that it was framed just a few minutes ago, it seemed to suggest that the ALJ -- the recommendation was that the ALJ would stick through, you know, the entire course of the case, through hearing; and so making sure that there's a carve-out for parties to be able to use their peremptory strike.

DEPUTY DIRECTOR VARMA:

So are you proposing an amendment to the recommendation, a counter?

COMMITTEE MEMBER SADASIVAM:

Yeah. I think I'm proposing an amendment, where we specifically carve out the parties' right to use or to file a peremptory motion or to use a peremptory strike on a judge before the Prehearing Conference.

COMMITTEE MEMBER SENIGAR:

I would like clarification about the current practice or policy.

DEPUTY DIRECTOR VARMA:

With respect to how we assign ALJs to cases? Sure.

We do not automatically assign an ALJ to a case when it's first opened. As it gets ready to go to hearing during the countering process, ALJs are assigned.

There's so many different factors that go into assigning an ALJ to the hearing, including availability of which ALJ is not in hearing, which ALJ has got -- you know, is not on vacation, and before the virtual world, which ALJ was geographically where. So there are many different factors that go into it.

And this is an item that, overall, the assignment of ALJs and how peremptory challenges work and stuff, it keeps coming up in Advisory Committee meetings over and over. So this is a topic that is constantly discussed.

You could have an ALJ that's assigned and then another ALJ gets peremptoried off another case. Now, I have to assign a different ALJ. So it's -- the calendar's demand is what dictates how we assign the ALJ to the hearing.

What Ms. Schwartz is saying is that for consistency, the recommendation would be that once the case is open, an ALJ is assigned and that's the ALJ that handles the entire case. And, you know, I don't know how the calendar would work and I don't know how -- but it's a recommendation and it would be something that if the committee voted on it, we would certainly consider and respond to.

Ms. Sadasivam is suggesting that there be an amendment to it to carve out a specific time period by which a party can still challenge that ALJ, even though they're assigned to hear motions and everything else, up through the hearing. So that's what the discussion is currently.

And was it five days before the hearing or Prehearing Conference? I forget what you said, Ms. Sadasivam.

COMMITTEE MEMBER SADASIVAM:

I'm sorry. Could you repeat that?

DEPUTY DIRECTOR VARMA:

What was your -- what was your timing; before the Prehearing Conference? Did you have a set number of dates before a Prehearing Conference that the peremptory could be filed?

COMMITTEE MEMBER SADASIVAM:

No, no, just before the Prehearing Conference.

DEPUTY DIRECTOR VARMA:

Okay.

Ms. Schwartz, did you wish to modify your recommendation based on the discussions?

COMMITTEE MEMBER SCHWARTZ:

I don't have an issue with that carve-out. It's my opinion the recommendation -- that that carve-out isn't necessary, that it doesn't preclude the peremptory challenge timelines as are established for still being implemented. But I don't have an issue with having that carve-out so that it would be that an ALJ is assigned to a due process matter once the complaint is filed; I guess notwithstanding peremptory challenge timeline.

I would also just add that this recommendation is also followed because it's the practice that many state and federal courts use when assigning cases, and I understand that OAH operates differently, but that was part of the rationale behind this recommendation.

DEPUTY DIRECTOR VARMA:

Okay. So can you -- before I ask for a second, can you phrase it exactly how you want it?

COMMITTEE MEMBER SCHWARTZ:

I recommend that OAH establish a procedure to assign an ALJ to a due process matter once a complaint is filed. I'm just trying to think of how best to include the peremptory challenge portion of it.

Ms. Sadasivam, do you have -- did you have any specific wording that you would like, as it was, I believe, your amendment?

COMMITTEE MEMBER SADASIVAM:

I'm also trying to think of the language that I would like to propose. Perhaps at the end of what you just said, you could say except for -- except that parties are still entitled to use their peremptory strike or file a peremptory motion before the Prehearing Conference.

COMMITTEE MEMBER SCHWARTZ:

Your Honor, maybe --

COMMITTEE MEMBER MENYUK:

Nothing in this recommendation precludes parties from exercising their right to peremptory challenges as it now stands under OAH's (inaudible).

DEPUTY DIRECTOR VARMA:

You're breaking up a little bit. Let me see if I can restate what you were saying, Mr. Menyuk.

So the recommendation will be that OAH assign an administrative law judge to handle all aspects of the case through the hearing once the complaint is filed, and nothing in the recommendation prevents a party from exercising their peremptory challenge rights timely.

Okay. Do we have a second?

COMMITTEE MEMBER HOOKS:

It's Rochelle Hooks, I second.

DEPUTY DIRECTOR VARMA:

Okay, Ms. Hooks has seconded it. Let's wait for some public comment and then see if there's further discussion on it.

MS. SAFFOLD:

Okay. We do have a few public comments already.

The first one is: "I do not agree. It is better to get different ALJs."

Second comment: "If the ALJs cannot set their own calendars, wouldn't the proposal affect continuances and other calendaring concerns?"

And the last comment that we received is: "I think it is better to get a different ALJ at times because we get someone with a new vision."

That is all we've received so far. The live stream is caught up to me reading the public comments. I think it's safe to proceed.

DEPUTY DIRECTOR VARMA:

Okay. Further discussions based on the public comments?

ALJ YAZIGI:

I'm sorry. Who was the second?

DEPUTY DIRECTOR VARMA:

Ms. Hooks, I believe.

ALJ YAZIGI:

Thank you.

DEPUTY DIRECTOR VARMA:

Okay. No further discussion. No further public comments. Let's go ahead and do the roll call.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

No.

DEPUTY DIRECTOR VARMA:

Okay.

Mr. Duran?

COMMITTEE MEMBER DURAN:

No.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

(Pause)

She's thinking. And the cat behind her is thinking also.

COMMITTEE MEMBER GROSNER:

Yeah, I'm sorry. Your Honor, I'm going to have to -- I'm going to have to say no.

DEPUTY DIRECTOR VARMA:

Okay.

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

No.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

I'm sorry. You broke up; is it me?

DEPUTY DIRECTOR VARMA:

Yes, yes?

COMMITTEE MEMBER MENYUK:

No. I said no.

DEPUTY DIRECTOR VARMA:

That's a no; is that correct?

COMMITTEE MEMBER MENYUK:

No. That's a no.

DEPUTY DIRECTOR VARMA:

Okay.

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

No.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

I've been debating. Am I the deciding factor, Your Honor?

DEPUTY DIRECTOR VARMA:

I have not asked for the count yet.

COMMITTEE MEMBER STEINHOLT:

Okay.

DEPUTY DIRECTOR VARMA:

I just see -- and I can't -- I can't ask for the count until you vote.

COMMITTEE MEMBER STEINHOLT:

Sure, sure, fair enough, fair enough. I'm going to say no for now -- well, I'm going to say no.

DEPUTY DIRECTOR VARMA:

Judge Yazigi, do you have a count on the ayes and the noes?

ALJ YAZIGI:

The noes have it, so we have four yesses from Northern California, one no from Northern California, and we have six noes from the South.

DEPUTY DIRECTOR VARMA:

Okay. So that recommendation did not carry.

Any further discussion on Item 19?

Okay, Item 20. "Judicial economy considerations regarding motions to bifurcate."

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes. I believe there are jurisdictional issues, in particular statute of limitations and residency issues, that should be bifurcated.

Now, my colleagues and I have seen a drastic increase in filings to attempt to pierce the statute of limitations in the last few years. My understanding is that OAH rarely, if ever, finds that a party has met the burden to pierce the statute of limitations, but is often denying motions to bifurcate or motions to dismiss.

And so if motions to bifurcate are granted, my understanding, and I'd ask for clarification if we have any statistics on this, is that the hearing that's held for the statute of limitations issue is typically on the first day of hearing. And the concern with this is that it's driving up the cost of litigation and puts a significant strain on resources on the parties, as they are required to prepare evidence and witnesses going back years, that may not even be at issue for the substantive issues of the hearing. When it's not held -- when it's not bifurcated until the first day of hearing, if at all.

And so I believe it's in the best interest of judicial economy to bifurcate the jurisdictional issues from substantive issues. I propose a recommendation that OAH establish a procedure for bifurcation and hearings on jurisdictional issues to be held two to three weeks before the hearing on substantive issues.

DEPUTY DIRECTOR VARMA:

Okay.

Discussion by the members? Questions?

COMMITTEE MEMBER HOOKS:

Can someone explain bifurcate, please?

DEPUTY DIRECTOR VARMA:

Sure. So what Ms. Schwartz is talking about is instances where, let's say, for example, I file a case on behalf of a student and the statute of limitations is two years -- is what it says. But there are times when you can reach further back than two years, depending upon the particular facts and law that may apply to that case, and I filed for five years.

What Ms. Schwartz is saying is that OAH take that kind of case and split it up, you know bifurcating it, and have a hearing first on whether I have established a legal ground based on the facts that I presented to be able to reach back five years, instead of being limited to two years from the date I filed.

And there are other times where residency may be an issue; whether the student is a resident of that area. That's another example where there could be a request to bifurcate and determine first whether or not the student is actually a resident to where that district that is being filed against has a responsibility.

Those are two examples that I can think of where there may be a motion to bifurcate. And what Ms. Schwartz is asking is that OAH have a policy that we bifurcate those types of cases and hear those jurisdictional issues first.

Ms. Schwartz, have I correctly characterized your item?

COMMITTEE MEMBER SCHWARTZ:

Yes, Your Honor. Thank you.

COMMITTEE MEMBER MENYUK:

Your Honor, if I may?

DEPUTY DIRECTOR VARMA:

Yes, Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

I hope I'm not breaking up. I'm trying to just get clarification because it seems to me whether they're bifurcated, you know, within the same week or bifurcated, you know, two weeks apart, I would think that it would actually drive up the cost of litigation to separate them if you -- because if you're -- if you have them, a lot of times they are, just as Ms. Schwartz said, different witnesses, but a lot of times they're the same witnesses that would be testifying as to what happened three, four years ago versus what happened two years ago.

So I -- and I certainly understand, you know, in federal court, we do this a lot, where we bifurcate issues, as jurisdictional (inaudible), so I understand that.

I guess I'm just looking for clarification on how she sees this as reducing litigation.

COMMITTEE MEMBER SCHWARTZ:

Yes, the reasons to be able to, I'm thinking specifically of the statute of limitations, but my recommendation would be just generally to bifurcate jurisdictional issues.

But when it comes to the statute of limitations, as you discussed, I would disagree and believe that it does, in fact, drive up the cost to not bifurcate them because the

limitations for why or how a party can pierce the statute of limitations is so limited that a hearing on the statute of limitations should not be including all witnesses. Of course, the party has discretion, but in order to meet that burden of proof, it shouldn't be required to have all witnesses or all documents going back to that period of time.

Because I know we're seeing attempts to pierce the statute of limitations, at times even going back ten years, when there's a two-year statute of limitations. And so without that bifurcation then, the party is required to go ahead and prepare, at times, eight additional years of both witnesses and documents that's burdensome to both parties and driving up the cost of litigation; where to bifurcate and have it separated should not be a restatement of all of those issues.

COMMITTEE MEMBER MENYUK:

But yet -- and, right now, is there no OAH policy on bifurcation?

MS. SAFFOLD:

Sorry, before we answer.

Mr. Menyuk, it does appear that your audio is very spotty and it is a bit hard to hear. Sometimes people find that if they turn off their video feed, it helps to boost the resources that are going to your audio, so maybe try that. It may help with making the audio a bit more smooth.

COMMITTEE MEMBER MENYUK:

Are you saying that you don't want to see this beautiful face?

DEPUTY DIRECTOR VARMA:

I love -- I love the artwork behind you.

MS. SAFFOLD:

(Inaudible)

COMMITTEE MEMBER MENYUK:

[Laughs]

DEPUTY DIRECTOR VARMA:

Mr. Menyuk, were you asking if there's an OAH policy on bifurcations; is that what -- is that what your question was?

COMMITTEE MEMBER MENYUK:

That is correct, Your Honor. Thank you.

DEPUTY DIRECTOR VARMA:

We don't have a policy. It goes case-by-case, motion-by-motion, and what the legal arguments are in each case. So that's -- it's a legal issue and there's nothing set in the law that says this is how all cases must be treated. Therefore, it's a motion by -- it's based on motion and argument in each case.

COMMITTEE MEMBER MENYUK:

Thank you, Your Honor. But there is -- I mean, there is a system by which that these motions are considered and ruled upon currently?

DEPUTY DIRECTOR VARMA:

Yeah. They're considered and ruled upon in regular motion practice, and there are cases that get bifurcated and there are cases that do not. So it's the regular practice of motion work.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Does OAH have statistics on both how often cases or motions to bifurcate are being granted? Within that, if they're being bifurcated, then at the start of the hearing or after? And then, also, statistics on how often a party has been successful (inaudible).

DEPUTY DIRECTOR VARMA:

I don't believe we have statistics on that and I don't know if we could actually track that because, you know, it's a database and I don't know if we have the search features to be able to track something like that. But, no, we don't have -- we don't keep statistics on that.

Obviously, if it's a bifurcated case, it'll have two decisions and that'll show up in the database, but other than that -- or it may only have one decision. I don't know. But, yeah, no, that's an item that we have no tracked.

Ms. Grosner, did you have a question or comment?

COMMITTEE MEMBER GROSNER:

No.

DEPUTY DIRECTOR VARMA:

Okay. Any further -- oh, Ms. Hooks and then Ms. Kooima.

COMMITTEE MEMBER HOOKS:

I was just asking if people can mute because it's really hard to hear already.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

I just have a comment. What you're presenting, Ms. Schwartz, seems very broad; and I'm just wondering, do you want it for any time, all cases? Because it just seems very broad and I would think a lot of cases it might be very particular, and it seems like that there is already a procedure in place that can address case-by-case.

Do you have any other comments?

COMMITTEE MEMBER SCHWARTZ:

Yes. So my recommendation is that when motions to bifurcate are made, that it would be in regards to jurisdictional issues; and so some of the statute of limitations issues or residency issues. And so it's when a motion to bifurcate a case is made that there is -- there are those hearings held two to three weeks in advance.

DEPUTY DIRECTOR VARMA:

Okay.

Okay. So did you want to set out how you want to phrase your recommendation, Ms. Schwartz, and then we'll see if there's a second?

COMMITTEE MEMBER SCHWARTZ:

Yes. I propose that OAH -- or I recommend that OAH establish a procedure for bifurcation for hearings on jurisdictional issues to be held two to three weeks before the hearing on the substantive issues.

DEPUTY DIRECTOR VARMA:

Okay.

Is there a second?

COMMITTEE MEMBER HOOKS:

This is Rochelle; I second.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Hooks has seconded it.

Let's give a few minutes for public comment and then any further discussion before there's a vote.

MS. SAFFOLD:

Okay. We do have quite a few public comments on this item already.

First comment is: "I do not agree with this. Some of our children have not received FAPE for more than two years. The motion is not good for the children."

Second comment: "Would this recommendation also apply to other basic jurisdictional issues, such as standing, ripeness, and mootness?"

Next comment: "Another issue that could be added is where educational rights holder is at issue."

Next comment:

"Since the (inaudible) decision, I have seen a significant increase in attempts to pierce the statute of limitations in my practice. I'm aware of very few, if any, OAH decisions which allow -- which have allowed piercing the statute of limitations, which supports the idea that piercing the statute of limitations is very rare, which is what the law states it should be.

In the hearing in which I have dealt with the statute of limitations issue, the decision has left both parties scrambling to reschedule witnesses. Additionally, both parties must prepare for substantive issues past the statute of limitations, which can be two to three times the number of witnesses, only to have the statute of limitations issues dismissed on the first day or the morning of the second day."

Next comment: "It should remain case-by-case."

Next comment: "Item 20. The issue is that OAH seems to be denying all motions to bifurcate. It feels impossible to get OAH to bifurcate under current practice."

Next comment: "Regarding motion practice, attorneys for districts are routinely told by ALJs that motions for bifurcation are not going to be granted."

Next comment: "Motions to bifurcate jurisdictional issues should be granted. This would promote judicial economy and preserve resources for both parents and districts."

That is the last comment that we've received thus far and the live stream is caught up to me reading the public comments.

DEPUTY DIRECTOR VARMA:

Okay. It seems to be a hot topic, so let's give it another 20 seconds to see if there's any further public comments.

MS. SAFFOLD:

We do have another comment. "I would like to gather statistics on how often motions for bifurcation are granted."

(Pause)

DEPUTY DIRECTOR VARMA:

Okay, can you have --

MS. SAFFOLD:

We do have --

DEPUTY DIRECTOR VARMA:

Oh, okay.

MS. SAFFOLD:

-- a couple more that have come in.

"Statute of limitations are routinely abused and this policy would require substantial arguments to be presented prior to allowing here seeing the statute of limitations to move forward in regards to substantive issues."

Next comment: "Please keep as is."

DEPUTY DIRECTOR VARMA:

Okay. Any further discussions from the committee members after the public comments? And somebody has their hand up, but I can't tell who it is.

COMMITTEE MEMBER SANDOVAL:

This is Aileen Sandoval.

DEPUTY DIRECTOR VARMA:

Oh, Ms. Sandoval, yes.

COMMITTEE MEMBER SANDOVA

Hi. Yes. I just had a clarification question. Is the request that it's automatically given once requested with two to three weeks before the hearing? Is this -- I guess if I can just get a little bit more clarification. Because it sounds like there's already something in place, but it's a case-by-case basis.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes. My recommendation is that the procedure is is that when there is (inaudible) that then a hearing will be held. It will be bifurcated and a hearing held two to three weeks. I know the public comment raised that there are other issues besides statutory limitations and residency, which is why I had framed the issue as that it's based on jurisdictional issues to give that flexibility.

DEPUTY DIRECTOR VARMA:

Yeah. You cut out for just a little bit there when you were first starting. So I think what you were saying was your recommendation is that all jurisdictional issues be bifurcated and you phrased it broadly because it -- we just gave two examples during the discussion and there may be other jurisdictional issues, correct?

COMMITTEE MEMBER SCHWARTZ:

Correct. Can you hear me now?

DEPUTY DIRECTOR VARMA:

Yes.

Ms. Christy, you had your hand up.

COMMITTEE MEMBER CHRISTY:

Yeah. I had a question and comment about if it is possible to get any statistics on how often these things are bifurcated. I don't feel like I can vote unless I know that information.

DEPUTY DIRECTOR VARMA:

Okay. So with respect to what Ms. Christy raised, that is separate from the recommendation that's currently being considered. And if Ms. Christy wishes to make a recommendation on statistics, we can come back to that after we vote on this one since this is the one that's currently on the table.

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yes, thank you, Your Honor. Yeah. I have a comment because I said that ADR -- I mean, sorry -- that the statute of limitations does raise costs, and I agree with that. But as people in the public had said, you know, (inaudible) we're trying to protect student rights here.

And, as Ms. Schwartz said, you know, there are very limited and specific reasons set forth in the statute that one can pierce the statute of limitations. And it is very limited. You know, in all my years of practice, I don't think I've ever asked for that once because of that reason (inaudible).

But, and so I really -- I get a little bit nervous because I feel like we would be denying a student's rights if we made this an automatic issue where, you know, automatically, you know, they want to save money so they're going to have this hearing two weeks before, which is, you know, a very difficult thing for a student to prove. But to do this beforehand without having a full trial on the evidence.

So that is my comment.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

I just had a comment, sort of along the same lines as Mr. Menyuk. But I guess my concern is that for a lot of the students, you know even if it is five years as opposed to the two-year statute of limitations, a lot of the times the clinical issues there require sort of that pattern to be able to show, you know, a pattern of behavior or a pattern of violations or mistakes or whatever it may be.

And so I guess my fear is that having this two to three weeks beforehand puts this huge burden. We're almost having to present, you know, years and years and years of data, if that's the case; and it kind of stunts what the actual, you know, case or trial should be about.

If it's about other things, it makes more sense to me, but if it's in terms of looking at jurisdiction of five years of allegations that occurred, I don't think that that's giving the students -- you know, it's not giving the opportunity to present properly what has happened, what has transpired, which is really important because timeline and patterns of behavior and history, I think, is really important and the crux of most cases.

DEPUTY DIRECTOR VARMA:

Okay.

And, then, let's see, I think, Ms. Schwartz, you had your hand up? And I thought I saw -- I thought I saw -- Ms. Senigar, I thought I saw your hand up, but -- okay. She's good.

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes. I'd like to add, we've talked about the burden to pierce the statute of limitations is difficult, but just specify that what the Education Code allows that everyone's operating on the same information is that in order to pierce the statute of limitations, it's if there are specific misrepresentations by the LEA that it had solved a problem before forming the basis of that due process hearing request. Or the second option is that the district has withheld information or there's withholding of information by the LEA from parents that was required to be provided.

Because it's so limited, a hearing on the statute of limitations, there have been some arguments that it would require all of this evidence and all of these witnesses beforehand, but it should be simply on those two issues of whether or not a student can establish that.

And so I don't see it imposing any additional burden on a student because if student is going to -- attempting to pierce the statute of limitations, regardless of whether it's bifurcated, they have that burden already.

DEPUTY DIRECTOR VARMA:

Okay.

COMMITTEE MEMBER SADASIVAM:

This is Ramaah. I think the concern that I have is that evidence is not due until five days before hearing and I'm not sure, Ms. Schwartz, if you have any thoughts on what implications this will have with evidence exchange? Because I don't think -- I

guess my concern is that having this hearing, you know, for jurisdictional issues two to three weeks before the actual hearing, the parties won't have evidence exchanged and know what the other side has.

So I am concerned about the parties not having all of the information if evidence will still be due five days before the substantive issue.

So do you have any recommendations or thoughts on evidence disclosures?

COMMITTEE MEMBER SCHWARTZ:

My take is that the bifurcation is on the statute of limitations case, and I know this is framed differently, but I think my colleagues and I are seeing specifically an increase of statute of limitation cases, where I can speak anecdotally that the majority of cases I see now are attempting to pierce the statute of limitations. And so at hearings, the motion to bifurcate would be -- the only evidence that should be produced is related to either of those two ways that a student can pierce the statute of limitation that there were specific misrepresentations that a problem had been solved or that there was a withholding of information that was required to be provided.

Because of that limitation, I don't see there being a strain or concern about significant evidence because everything should be limited to just those two ways that the statute of limitations could be pierced in that particular instance.

DEPUTY DIRECTOR VARMA:

Okay. Any further comments, discussion?

MS. SAFFOLD:

We do have public comments.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

Okay.

"Please protect our children and keep it case-by-case."

Next comment: "We need more statistics before you vote."

Next comment: "Students' rights cannot be violated if they are allowed to raise" -
- they've abbreviated SOL for –

"statute of limitation issues and have a hearing to get an order allowing them to pierce the SOL. All that is being asked is that the question of SOL be decided with enough time to understand what is substantively being decided at hearing. SOL of limitations issue also does not stop a student from presenting background information."

Next comment:

"Complaints are regularly filed attempting to pierce the statute of limitations for reasons beyond those provided or in the statute and to allow the issues to move forward without first hearing the issue of whether piercing the statute of limitations can even be pierced allows for abuse of the judicial system and resources stolen from the children we are trying to protect."

Next comment: "Please vote no on this recommendation."

That is all that we've received thus far and the live stream has caught up to me reading the comments.

DEPUTY DIRECTOR VARMA:

Okay.

Any further discussions?

Ms. Hooks, you second this, right? Okay; she's nodding her head, yes, okay.

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

All right. Let's go ahead and do a roll call. Ms. Christy?

COMMITTEE MEMBER CHRISTY:

No.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

No.

DEPUTY DIRECTOR VARMA:

That's a yes?

COMMITTEE MEMBER SADASIVAM:

No.

DEPUTY DIRECTOR VARMA:

Oh, she said -- okay, no. No for Ms. Sadasivam.

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

No.

DEPUTY DIRECTOR VARMA:

Mr. Duran?

COMMITTEE MEMBER DURAN:

I have to vote no at this time, Your Honor.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

No.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

No.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

No.

DEPUTY DIRECTOR VARMA:

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

No.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

Okay. Judge Yazigi, vote count?

ALJ YAZIGI:

The noes have it. We have one, two, three yesses and eight noes.

DEPUTY DIRECTOR VARMA:

Okay. So that recommendation did not carry.

Now, I would like to go back to allow Ms. Christy an opportunity. She talked about wanting some data. Did you have further discussion or recommendation on that?

COMMITTEE MEMBER CHRISTY:

Yeah. I guess I would like to request if OAH can provide the committee some more information and statistics on how often these motions to bifurcate are granted and how often the statutes of limitations are pierced.

DEPUTY DIRECTOR VARMA:

Okay.

Any discussion on that request?

COMMITTEE MEMBER MENYUK:

Yes, Your Honor. Mr. Menyuk here. I would also like to know how many times with student filing requests that this has occurred.

DEPUTY DIRECTOR VARMA:

We lost you.

COMMITTEE MEMBER MENYUK:

I'm always lost. I'm just looking for, included in that statistic, the number of times a student requests this, that it would be pierced. So, yeah, the number of pierced -- the number of times it's requested, the number of times it's granted, the number of times it's denied.

DEPUTY DIRECTOR VARMA:

So Mr. Menyuk is asking for data on the number of times the statute of limitations is an issue in the student's case, the number of times it's pierced and the number of times it's denied, correct?

COMMITTEE MEMBER MENYUK:

Yes, Your Honor, that is correct.

DEPUTY DIRECTOR VARMA:

Okay.

Ms. Christy, is that -- does that summarize the data you're requesting also?

COMMITTEE MEMBER CHRISTY:

Yes. Thank you, Your Honor.

DEPUTY DIRECTOR VARMA:

Any further discussions on that?

Ms. Schwartz, your hand is up. Did you --

COMMITTEE MEMBER SCHWARTZ:

Oh.

DEPUTY DIRECTOR VARMA:

Okay.

COMMITTEE MEMBER SCHWARTZ:

I apologize. I was just going to second it.

DEPUTY DIRECTOR VARMA:

Okay. That's fine. Let me ask. Judge Yazigi, is the request for data -- is this -- can this be a recommendation that we gather data; is that appropriate?

ALJ YAZIGI:

Yes.

DEPUTY DIRECTOR VARMA:

Okay. So we'll phrase it as a recommendation. Ms. Christy's recommendation is that OAH gather data and bring it to the Advisory Committee on the number of times the statute of limitations is allowed to be pierced and the number of times it is denied.

Is that a fair way to reflect your request? Okay.

Any second?

COMMITTEE MEMBER SCHWARTZ:

Can I -- can I make an amendment?

DEPUTY DIRECTOR VARMA:

Sure, go ahead. It is still open for discussion.

COMMITTEE MEMBER SCHWARTZ:

In addition to the statute of limitations, also data then on motions to bifurcate and how often those are granted.

DEPUTY DIRECTOR VARMA:

Are you asking for all motions to bifurcate or just on statute of limitations?

COMMITTEE MEMBER SCHWARTZ:

All motions to bifurcate. And, if possible, then it could be -- the data could be collected in a way that it's per type of motion to bifurcate, so for statute of limitations issues (inaudible) residency issues.

DEPUTY DIRECTOR VARMA:

All right.

COMMITTEE MEMBER MENYUK:

Not to make it even more broad, Your Honor -- Eric Menyuk here.

DEPUTY DIRECTOR VARMA:

Okay.

COMMITTEE MEMBER MENYUK:

A question is -- it would also be nice to know whether it was ruled on by motion or at the hearing.

DEPUTY DIRECTOR VARMA:

Okay. [Laughs] All right. Let me see if I can phrase the request with recommendation with all the amendments, and see what Ms. Christy thinks because it's her request.

The committee is asking OAH to gather data on how many times there are motions to bifurcate, how many times they're granted, how many times motions to bifurcate are ruled at hearing, how many times they're ruled prior to the hearing, data on how many times a student's case raises the issue of statute of limitations, how many times is the student successful in piercing it, and how many times is it denied.

Does that encompass everything, Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes. Thank you, Your Honor.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz, does that encompass everything for you?

COMMITTEE MEMBER SCHWARTZ:

I believe so.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk? Mr. Menyuk, does that encompass what you're asking for?

COMMITTEE MEMBER MENYUK:

Thank you --

DEPUTY DIRECTOR VARMA:

I think we lost him.

COMMITTEE MEMBER MENYUK:

No, I can't unmute. Yes, it is, Your Honor. Thank you very much.

DEPUTY DIRECTOR VARMA:

Sure.

Okay. Do we have a second?

COMMITTEE MEMBER MENYUK:

I'll second it, Your Honor.

DEPUTY DIRECTOR VARMA:

Okay. Mr. Menyuk beat Ms. Grosner, who did have her hand up, but she was muted, so.

All right. Why don't we give a few minutes for public comments?

I know there's only a couple more items left, but, you know, if anybody -- we're at noon. If anybody wants a break, we can take a break while we wait for public comments.

Ms. Hooks is nodding her head yes.

Ms. Saffold, would five minutes be sufficient?

MS. SAFFOLD:

Yes, that should be fine.

DEPUTY DIRECTOR VARMA:

Okay. Well, we have a recommendation pending and we're going to take a five-minute break. We'll be back at 12:10. How's that? Four-minute break.

All right, 12:10, and we'll keep gathering the public comment.

(Break Held Off the Record)

DEPUTY DIRECTOR VARMA:

Ms. Saffold, can you hear me?

MS. SAFFOLD:

Yes, I can hear you.

DEPUTY DIRECTOR VARMA:

Do we have more public comments?

MS. SAFFOLD:

We do.

DEPUTY DIRECTOR VARMA:

Okay. We'll wait for everybody to get back and then go over it. Oh, Mr. Menyuk needs to be let in again.

COMMITTEE MEMBER MENYUK:

I don't know why. My program, MS Teams, won't let me access the meeting, but I can do it on my web browser. Generally, I have not had that problem.

DEPUTY DIRECTOR VARMA:

That's interesting.

COMMITTEE MEMBER MENYUK:

I know. I've never had that before.

DEPUTY DIRECTOR VARMA:

Well, you're coming through clear this time, so.

All right. I think everybody's back. We're at 12:12. So, Ms. Saffold, you said there are more public comments. Let's go ahead and have the comments read.

MS. SAFFOLD:

Okay.

"Bifurcation of hearings for jurisdictional issues is the most judicially iconic way to move forward for all parties."

Next comment: "Thank you for voting no."

Next comment: "Please also provide statistics for when the case is bifurcated to (is it the first day of hearing, a few days before substantive issues, a week before, et cetera)."

Next comment: "Please also gather how many motions for bifurcation are made and how many granted as Ms. Christy originally requested."

Next comment: "Can this data be shared with the public?"

And the last comment that has come in is: "Ms. Schwartz had also asked for information on the type of motion to bifurcate. That would also be helpful data and isn't on ALJ Varma's current list."

That is the last comment that we've received and the live stream is caught up to reading the public comments.

DEPUTY DIRECTOR VARMA:

Based on those public comments -- well, Ms. Steinholt is not in. Let's wait for her to join.

Okay. Based on those public comments, is there any further discussion?

COMMITTEE MEMBER SCHWARTZ:

Can you read the recommendation again, the final variation?

DEPUTY DIRECTOR VARMA:

I kind of -- I read it off my notes, so I didn't write it down exactly. I'll -- okay. Let me try again. The recommendation is that -- and we are recording this, so we have the exact version, but I'll try again.

The recommendation is that OAH gather data on how many motions to bifurcate are made, how many are granted, how many are ruled on by motion, how many are ruled on at hearing, and then specifically dig down further on how many involved student's request to pierce the statute of limitation and how many times are those granted and the student is allowed to pierce the statute of limitations and how many times are those denied.

That's how I have it in my notes. Is that a fair characterization? I'll open it up to the committee members.

COMMITTEE MEMBER SCHWARTZ:

I believe the only thing that's missing is the additional request that in terms of that data for the motions to bifurcate that it's broken down into each type of motion to bifurcate depending on the jurisdictional issue.

DEPUTY DIRECTOR VARMA:

Okay, so --

COMMITTEE MEMBER MENYUK:

In other words, what is the issue for bifurcations -- yeah, not the type of motion. What is the issue?

COMMITTEE MEMBER SCHWARTZ:

Yes. Yes.

COMMITTEE MEMBER MENYUK:

Okay.

DEPUTY DIRECTOR VARMA:

Okay. So let's see if I can raise it again. The request is that OAH gather data on how many motions to bifurcate, what is the basis for the motion to bifurcate, how many times is it granted, how many times is it denied, how many times is it ruled on by motion, how many times is it ruled on at hearing.

And if we do that, then we don't need to put in the statute of limitations because that would already be covered under what is the basis for the motion, correct? Okay.

COMMITTEE MEMBER SCHWARTZ:

The only component that wouldn't be would be the number of times the statute of limitation is pierced. I don't know that that would be covered with others.

DEPUTY DIRECTOR VARMA:

Well, if the -- if the data gathers how many times it's granted, that would tell you that, would it not? Because one of the questions that we are asked to answer is how many times is it granted and how many times is it denied? And the question is --

COMMITTEE MEMBER MENYUK:

I think the question is --

COMMITTEE MEMBER SCHWARTZ:

But (inaudible) denied versus granted or denied, right? The motion to bifurcate could be granted, but then still, through that bifurcation, the statute of limitations -- through that hearing, (inaudible) found that the statute of limitations could not be pierced.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

Yeah. I was just -- all I was going to say is that, yeah, I mean just how many times a motion for bifurcation is granted, then you're going to lose that data. Then it's how many motions for bifurcation on this issue is granted or on that issue is granted or on this issue is granted. If you break it down by issue, then you're covered.

COMMITTEE MEMBER SCHWARTZ:

I think even still just granting a motion to bifurcate wouldn't be giving us that data on when you -- if the motion to bifurcate is, either way, if it's granted or not, what then is the ultimate decision regarding whether the statute of limitations can be pierced?

COMMITTEE MEMBER MENYUK:

Again, if you have a motion to bifurcate on the issue of statute of limitations, whether that issue is -- if that issue is granted, then the bifurcation over -- oh, I'm sorry. Are you asking ruled on positively or negatively?

DEPUTY DIRECTOR VARMA:

I think I understand what Ms. Schwartz is asking.

COMMITTEE MEMBER MENYUK:

Yeah.

DEPUTY DIRECTOR VARMA:

She's asking for additional data point, which is on statute of limitations, once the bifurcation happens, how many times does a student win?

COMMITTEE MEMBER MENYUK:

Got it. Makes sense.

DEPUTY DIRECTOR VARMA:

Okay. Would one of you like to try and frame this?

COMMITTEE MEMBER MENYUK:

Well, it is Ms. Christy's.

DEPUTY DIRECTOR VARMA:

I think that's mean to do to her. She's -- all right. Well, I'll try again.

COMMITTEE MEMBER CHRISTY:

Yeah, I'm fine with the original wording, so if you could try again that would be great.

DEPUTY DIRECTOR VARMA:

All right. The request is that OAH gather data on how many motions to bifurcate are raised, what the grounds are, or the issue for bifurcation, how many times is the motion to bifurcate granted, how many times is it ruled on by motion, how many times is it ruled on at hearing. And then a separate additional subset to this, which is specifically on statute of limitations, how many times is the student allow to pierce the statute of limitations.

Okay. I will still claim that that's Ms. Christy's recommendation even though I phrased it. Is there a second to it?

COMMITTEE MEMBER SCHWARTZ:

I'll second it.

DEPUTY DIRECTOR VARMA:

Okay, Ms. Schwartz has seconded it.

Since it's a slightly different recommendation, I'm going to give the system a little lag time to see if there's any further public comment.

Ms. Saffold, let us know when it's caught up.

MS. SAFFOLD:

Will do.

(Pause)

Okay. We have caught up to the second of the motion -- or of the recommendation, I think, and we have not received any additional public comments.

DEPUTY DIRECTOR VARMA:

Okay. Let's go ahead and do a roll count for the vote.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Duran?

COMMITTEE MEMBER DURAN:

Yes.

DEPUTY DIRECTOR VARMA:

Is there an echo, Ms. Saffold? Can --

MS. SAFFOLD:

Yes. If anyone is not muted that isn't actively speaking, please mute your mic. I think that will help.

DEPUTY DIRECTOR VARMA:

Okay. That helped.

Mr. Duran, did I -- what was your vote?

COMMITTEE MEMBER DURAN:

My vote is yes.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk?

COMMITTEE MEMBER MENYUK:

I'm sorry, Your Honor. Could you re-read the -- I'm kidding. Yes.

DEPUTY DIRECTOR VARMA:

[Laughs] Uh-huh.

COMMITTEE MEMBER MENYUK:

Yes. Yes.

DEPUTY DIRECTOR VARMA:

Yes.

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

Yes.

DEPUTY DIRECTOR VARMA:

Okay. I believe that's unanimous.

Correct, Judge Yazigi?

ALJ YAZIGI:

Correct.

DEPUTY DIRECTOR VARMA:

Great. OAH will consider that recommendation and respond to it.

Okay, Item 21. This has been discussed before, but it's on the agenda again.

"Proposed alternatives to prevent law firms from misrepresenting to OAH that they have been properly authorized to file for due process on behalf of the district."

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Thank you, Your Honor. I'll just kind of repeat what I said earlier since there were a couple of members that weren't present.

But just one of the reasons for asking for this is that it seems there's like an inequity that's taking place where school districts have access to these public funds and the parents don't in these matters of litigation. And of great concern is the fact that it's often these students have -- they're minorities, they're black and brown, and the school districts are filing against them and they don't -- they don't have lawyers. And often these cases are not brought before the Board either.

And so it just feels like there's sort of inequity when the parents, you know, they have to find an attorney, but yet the district attorneys are funded by taxpayers. So it's just the equity seems to be amiss here.

DEPUTY DIRECTOR VARMA:

Discussion by committee members?

COMMITTEE MEMBER SENIGAR:

I agree. I have seen these inequities play out with families, especially families, like Black families who are impacted by structural, institutional and systemic racism, families that do not have the financial resources, and families that are impacted by poverty, and families that do not speak English as their native language.

DEPUTY DIRECTOR VARMA:

Other comments or discussions, questions?

Ms. Grosner, this item was on the last meeting agenda and OAH did respond to it. Did you have a new recommendation?

COMMITTEE MEMBER GROSNER:

Yes, Your Honor. I had a couple different thoughts.

One is that I guess I wonder if I could motion to recommend that maybe OAH sponsors or supports legislation that would give OAH authority to request verification from districts to ensure that they actually have standing to participate in a due process.

DEPUTY DIRECTOR VARMA:

Okay.

So the recommendation from Ms. Grosner is that OAH sponsor legislation that would require OAH to confirm whether a school district has the authority to file a case. Is that correct?

COMMITTEE MEMBER GROSNER:

That's correct. Although, I wonder if I could throw this up for discussion, as well, because my other thought was that could OAH investigate what other state agencies or personnel could actually possibly have jurisdiction and report this information back to the committee for review at a different time.

DEPUTY DIRECTOR VARMA:

Okay. I'll go ahead and open up the discussion on both your points that you just -- that you just raised.

COMMITTEE MEMBER HOOKS:

This is Rochelle. And I thought that we addressed this at the last committee meeting.

DEPUTY DIRECTOR VARMA:

So it was addressed. However, since it falls within the realm of what the committee's role is, which is to advise us on due process and mediation proceedings and how we conduct those. It was put back on the agenda.

Over the years, there are agenda items that reappear and appear and, so you know, we decided to put it back on the agenda because it falls within the parameters, so.

COMMITTEE MEMBER HOOKS:

Thank you.

DEPUTY DIRECTOR VARMA:

Okay.

So, Ms. Grosner, did you want to phrase the the entire recommendation as you would like it?

COMMITTEE MEMBER GROSNER:

Okay. Yes. So I would like to motion to recommend that OAH sponsor or support legislation that would give OAH authority to request verification from districts to ensure that they actually have standing to participate in due process.

DEPUTY DIRECTOR VARMA:

Is there a second for that recommendation?

Oh, Ms. Kooima has her hand up.

COMMITTEE MEMBER KOOIMA:

I actually have a question. If that's okay? I'd like to --

DEPUTY DIRECTOR VARMA:

Sure.

COMMITTEE MEMBER KOOIMA:

-- back up a little bit. Would OAH even be able to sponsor or support legislation or is it a neutral party?

DEPUTY DIRECTOR VARMA:

Well, the committee can make the recommendation, and then we will respond and give you our position on it. I am hesitant to make any legal statement at this point because it's not something that I feel comfortable.

Does OAH have the authority to sponsor or support legislation? That's basically going to be a question that we would have to address in response to your recommendation if the recommendation passes, so.

And I don't know. I don't -- I can't -- I can't give you an answer to that because I think we would take the recommendation and then we would appropriately respond to it, and I don't want to jump the gun and say something that I don't know.

COMMITTEE MEMBER KOOIMA:

Okay, I understand. I just was -- you know, it would probably influence my decision, but, okay, well, thank you.

DEPUTY DIRECTOR VARMA:

Sure.

Ms. Senigar, did you have a question?

COMMITTEE MEMBER SENIGAR:

Yeah, I have a clarifying question. So I believe at our last meeting, the judge said that there is currently no policy that OAH has to identify whether the district has the authority to take the case to hearing.

Does that policy still stand? There is no policy in place to ensure that the district has standing to go to hearing.

DEPUTY DIRECTOR VARMA:

Well, policy is -- it may not be the word that I would use. The word I would use is we don't have legal authority that requires us to confirm whether or not an attorney has filed a case has -- you know, the client is agreeing to the case.

This is general legal principles in the sense that, you know, when an attorney files a case unless somebody raises the issue of whether that attorney had the right to file the case we don't -- we don't judge that. We don't ask every attorney, do you have the authority to file this case?

There are certain instances where the law does require Some some examination. That's when the student is 18, and many times the -- you know, somebody will raise that issue.

So there's no policy. We're following what the law is and what is required. And I think that may be why Ms. Grosner is making the recommendation for legislation, so, yeah.

Okay. Anybody -- Ms. Christy, did you have a question or comment?

COMMITTEE MEMBER CHRISTY:

I do, Your Honor. I just was wondering, to your knowledge, has OAH ever authored any other legislation in this kind of manner?

DEPUTY DIRECTOR VARMA:

To my personal knowledge, no, not that I know of. But, you know, I've been here the years that I've been here. I can't speak to -- you know, the agency has existed since 1945, so.

We have regulations that we have to follow that the APA -- you know, the APA and things like that, so, you know, the -- I don't -- I don't know. In my time, we haven't sponsored anything that I can think of.

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Your Honor, can we maybe explore OAH investigating what other state agencies or personnel could possibly have jurisdiction?

DEPUTY DIRECTOR VARMA:

You could make the recommendation. I don't -- I don't know what the response would be. We'd have to look at your recommendation and respond appropriately.

What I can say is, you know, I don't have an answer to that until you make the recommendation and we look at it, so. You can make that as part of your original recommendation, separate recommendation, or not at all. It's up to you.

COMMITTEE MEMBER GROSNER:

I'll make it as a separate recommendation. If that's okay?

DEPUTY DIRECTOR VARMA:

Okay. So your first recommendation is that -- is what you said earlier about --

COMMITTEE MEMBER GROSNER:

The supporting the --

DEPUTY DIRECTOR VARMA:

-- sponsoring and supporting the -- okay.

Do we have a second for that?

COMMITTEE MEMBER SENIGAR:

I'll second.

DEPUTY DIRECTOR VARMA:

Okay. Ms. Senigar seconded it.

And then, Ms. Christy, Ms. Grosner, Ms. Senigar, you have your hands up, so if you -- okay, great.

Discussion from the committee on the recommendation?

And we'll wait for public comment.

While we wait for any public comment to come across, I will let the committee know that, I believe it was in the course of this last week, OAH received multiple emails from public members of the public and they all seem to do with this item. So they are all very similar in how they're phrased, almost verbatim. There are some slight differences, but basically they have one set comment.

So, on behalf of the public members that have been sending these comments to OAH, I'm going to go ahead and read that comment while we wait for other public comments.

"Deputy Director Bob Varma, California State Law requires that school districts' district boards approve litigation against students. This is meant to provide oversight by elected officials for all students, but the special education system in California is broken and districts are not following the law for children with disabilities.

Thus, district bureaucrats are allowed to simply hand out contracts with other -- with our public dollars to for-profit litigators who stand to make money by creating lawsuits. When these litigators go before the Office of Administrative Hearings, a State Agency, to litigate against a student with a disability, OAH simply takes their word for it that they have the proper authorization under state law. In most cases, school district boards are not even made aware that the litigation exists.

In contrast, OAH scrutinizes parents by demanding they offer proof that they represent students who are over 18 years old. This is a clear double standard.

Please direct OAH to make lawyers who say they represent districts and legal actions against children with disabilities show proof that the respective school boards have authorized said legal action. The people of California have a right to know how our tax dollars are being spent.
Regards."

MS. SAFFOLD:

Okay. We do have quite a bit of public comment on this agenda item, so I will go ahead and read those.

First comment:

"My child was sued by my district in April 3rd, 2020, right during the pandemic. I did a PRA and asked if FUSD board members approved litigation and they did not. I asked for OAH to always ensure district board members always are informed on any litigation initiation. We want transparency."

Next comment:

"Parent taxpayers want to ensure our tax dollars are used for education, not litigation. Districts are allowing SELPA directors and management to make decisions on when to initiate litigation without board approval. This is discriminatory for special education students."

Next comment: "Could Judge Varma comment on district's legal obligations to file under certain circumstances?"

Next comment:

"This recommendation fails to take into consideration school districts legal obligation to file for due process. I would like to know the legal authority for the contention that school districts must have authority from a school board to file for due process."

Next comment:

"OAH regularly enforces the ADA and Rehab Act when requiring accommodations, et cetera. OAH regularly enforces standing against students and just made a decision in May 2021. OAH's response did not explain how it cannot make a standing determination as a basic jurisdictional consideration equal to mootness and rightness."

Next comment: "This is very true. Hispanic and black minorities are being sued. OAH needs to request districts prove that board approved litigation. My district sued us without board approval."

Next comment:

"Is there a proposed solution or recommendation? Is there any data on how often this actually happens? School districts have as much right to file as students do and are doing so for the benefit of the student. Districts are required to file notices of representation and to do so without consent of the client, i.e. the school district, would be a violation of the California Bar. Legislation is unnecessary."

Next comment: "OAH is supposed to be a neutral body. It is inappropriate for OAH to support or sponsor this kind of legislation."

Next comment: "If the committee votes on this recommendation, it should apply to verifying whether any attorney, student, or district has authority to file cases."

Next comment: "So how is parent to prove -- so how is parent has to prove that we have exhausted all alternatives and not have guardianship on student?"

Next comment: "Parents want OAH to require district to prove that board approved litigation."

That is the last comment we have received thus far and the live stream is caught up to my reading of the public comments.

DEPUTY DIRECTOR VARMA:

Okay, let's go ahead and do a roll call for the vote.

Ms. Christy?

COMMITTEE MEMBER CHRISTY:

No.

DEPUTY DIRECTOR VARMA:

Ms. Hooks?

COMMITTEE MEMBER HOOKS:

No.

DEPUTY DIRECTOR VARMA:

Ms. Sadasivam?

COMMITTEE MEMBER SADASIVAM:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Schwartz?

COMMITTEE MEMBER SCHWARTZ:

No.

DEPUTY DIRECTOR VARMA:

Ms. Senigar?

COMMITTEE MEMBER SENIGAR:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Duran?

COMMITTEE MEMBER DURAN:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Kooima?

COMMITTEE MEMBER KOOIMA:

Yes.

DEPUTY DIRECTOR VARMA:

Mr. Menyuk? Did we lose him?

(Pause)

MS. SAFFOLD:

I think he may have gotten disconnected.

DEPUTY DIRECTOR VARMA:

I think he got disconnected. We still have enough for the quorum, so.

Ms. Sandoval?

COMMITTEE MEMBER SANDOVAL:

Yes.

DEPUTY DIRECTOR VARMA:

Ms. Steinholt?

COMMITTEE MEMBER STEINHOLT:

No.

DEPUTY DIRECTOR VARMA:

Judge Yazigi, can you give us the vote count?

ALJ YAZIGI:

Yes. I have six yesses and four noes, so the yesses have it.

DEPUTY DIRECTOR VARMA:

Okay. So if Mr. Menyuk had been present and voted no, the yesses would still have it, correct?

ALJ YAZIGI:

Correct.

DEPUTY DIRECTOR VARMA:

Okay. So OAH will respond to the recommendation.

Ms. Grosner, anything further on this agenda item?

COMMITTEE MEMBER GROSNER:

No, thank you, Your Honor.

DEPUTY DIRECTOR VARMA:

Okay. Last item, which is public comment. If we have any that are -- that are general public comments, Ms. Saffold, you can read them and then we'll continue to leave the feed open, I think, five minutes to get any additional comments once everybody's done.

MS. SAFFOLD:

Okay. We have received one general public comment. It is: "What is the OAH Special Education Advisory Committee doing to ensure equity across all demographic groups in which it serves? Are they -- are there any Black, Hispanic, Asian, or POC males on the committee? What about as ALJs? This is for public comment."

We've received another public comment. I think there's some typos here. I think it's supposed to say thank you for the yes.

And then we also have two comments that came in later after Agenda Item 16 was closed or was moved past. So I'll read those now.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

The first comment is: "There is" -- oh, sorry.

DEPUTY DIRECTOR VARMA:

Go ahead.

MS. SAFFOLD:

"There is also not a lot of time given to type these comments in the few seconds between your ask for comments and closing the recommendations."

Next comment: "I also request that the public be allowed to continue to participate by Teams, as we want to be involved."

An additional comment has just come in. "Public needs to be able to participate by phone."

That is all that we have received thus far, and the live stream is caught up to my reading of the comments. So if we want to wait for the five minutes, I think that would be good.

DEPUTY DIRECTOR VARMA:

Okay.

In the meantime, does -- and do any of the committee members have anything based on the comments?

COMMITTEE MEMBER SENIGAR:

I have a comment that's not based on the comments.

DEPUTY DIRECTOR VARMA:

Okay. I guess you can make a public comment, as well.

COMMITTEE MEMBER SENIGAR:

So, Your Honor, I want to go back to the question that I had about the transparency with the OAH response team, and I just wanted to clarify.

You said that the OAH chooses items on the agenda that fall within the parameter of advising on the issues of mediation and due process hearing.

I think that us, as committee members, we're transparent. Our names are posted in a -- in a public forum. And I think that it's appropriate to know who is the OAH team responding to our recommendations, their names and their titles.

If it changes every time we make recommendations, then we should know that, as committee members and as the public.

So I would like to propose that on the responses that we get, responses to recommendations, that the names and the title of the OAH response team is placed in that document for transparency.

DEPUTY DIRECTOR VARMA:

Okay. Thank you.

MS. SAFFOLD:

We have one additional public comment -- sorry -- just come in.

DEPUTY DIRECTOR VARMA:

Okay.

MS. SAFFOLD:

First is: "I have heard a lot of complaints regarding the website for OAH's decisions and motions or steps being taken to fix these."

Next comment: "Could you summarize what was said during 13A as there were audio issues during the time it was being discussed?"

An additional comment has come in. Are minorities -- that's -- "Our minorities that speak Spanish are not able to participate."

DEPUTY DIRECTOR VARMA:

Okay. Typically, we don't respond to public comment, but one of them is that somebody didn't hear part of what was already discussed. So I'll go back and sum up the issue with options for mediations and hearings following the pandemic.

And the discussion was, and from OAH's perspective, it's something that we had already been looking at before the pandemic, which is how many different ways can we provide our services to the community? So we'd already looked at other options other than just in-person.

Currently, we are following the current process, which is we are setting everything virtually.

Our hope is that we will have other options to offer to the public once the pandemic is over. We do not have that worked out yet. We don't have the steps of how we will return once the pandemic is over. But it is not something that -- it is something that OAH has considered is virtual, hybrid, in-person. We're looking at all the options. We just don't have a set timeline yet and we don't have a set process of what will happen.

And we will keep the community informed. We'll keep the Advisory Committee informed and engaged on this. So we'll update you as this proceeds. Nobody can really accurately predict what's going to happen, so we're just -- everybody's working through this process.

With respect -- and, again, we don't usually comment, but there is a public comment that I want to address, which is the comment that non-English-speaking public members were not able to access the hearing -- the Advisory Committee.

And we do usually have a translator available when we know that there is a request ahead of time. There was no request this time.

So we want to have it available. If people from the public want to participate, they can contact us for the next public meeting and we'll see what we can do to be able to provide it in a non-English language if that's needed. You know when we did this in person, we would have a translator available and we do that virtually, too. It's just there was no request made at this time, so.

MS. SAFFOLD:

We have one additional public comment in relation to what you said. It says:
"We need Spanish caption, please."

DEPUTY DIRECTOR VARMA:

Yeah. And that's -- again, it's a technology thing. We will try and do what we can to make this meeting more accessible to the public; and that was an item raised in the sense that the public comment, Item Number 16, and the committee did make a recommendation, so, on how to make this more accessible.

Ms. Grosner?

COMMITTEE MEMBER GROSNER:

Thank you, Your Honor. I just had a quick comment.

I do believe you have on the agenda -- it says you have to request translation by the 1st of June. So I guess I wonder if, you know, it's -- that's still about 19 days before the meeting. I wonder if it could be, like, pushed up so it gives people time to be able to try to request that. It was just my comment.

DEPUTY DIRECTOR VARMA:

Yeah. I appreciate that; and we'll look at our processes. This is -- you know, the virtual Advisory Committee is new and it was -- we were all -- it was thrust upon everybody, the public and us. So it's something that we will always look to improve.

Anything further, Ms. Saffold?

MS. SAFFOLD:

We have one additional comment. "You need to post this on the website."

And the live stream is caught up to Ms. Grosner's additional comment. We haven't received anything else.

DEPUTY DIRECTOR VARMA:

Okay. If there's nothing further from the committee, we can adjourn and see you all in the fall. Thank you for your time. Thank you for your input. We do appreciate it. Thank you so much. Everybody have a great Friday.

Thank you. Bye.

(Recording Ends)

CERTIFICATE OF TRANSCRIPT

I, Michelle Busby, hereby certify that this transcript is a true, complete, and accurate transcription of the recording of the Special Education Advisory Committee meeting that took place on June 18th, 2021, Office of Administrative Hearings, via Zoom videoconference. This is the corrected original transcript and the statements that appear in this transcript were transcribed by me to the best of my ability. Executed under penalty of perjury in Sacramento, California on the 28th day of November, 2023.

Michelle Busby

Transcriber

Northern California Court Reporters