

**OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**ADVISORY COMMITTEE MEETING
TRANSCRIPT OF PROCEEDINGS
May 17, 2019**

Reported by:

Brywn Whatford, CSR No. 14234

Job No.:

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(Format Modified for Accessibility)

TRANSCRIPT OF PROCEEDINGS, taken at 1515 Clay Street, Suite 206, Oakland, California, commencing at 10:07 a.m. and concluding at 12:29 p.m. on Friday,

May 17, 2019, heard before MARGARET GIBSON, Administrative Law Judge, reported by Brywn Whatford, CSR No. 14234, a Certified Shorthand Reporter in and for the State of California.

APPEARANCES

NORTHERN CALIFORNIA:

SACRAMENTO	OAKLAND
Margaret Gibson, Division Presiding Administrative Law Judge	Jennifer Haley, Chair
Lisa Corr, District Attorney	Rochelle Hooks, District Attorney
Roberta Savage, Parent's Attorney	Kathryn Dobel, Parent's Attorney

southern california

VAN NUYS	SAN DIEGO
Marian Tully, Chair, Administrative Law Judge	Peter Paul Castillo, Chair. Administrative Law Judge
Brian Krikorian, Administrative Law Judge	Margaret Dalton, Parent's Attorney
Sophia Bliziotis, Parent's Attorney	

ADMINISTRATIVE LAW JUDGE GIBSON:

We're going to go ahead and start. Normally, I would continue to wait, but it looks like we're not going to have a quorum in Southern California anyway. We're going to go ahead and hold the meetings.

There was one person who told us that they were going to come in Southern California and had to cancel at the last minute.

So, Southern California, you can participate in the meeting. You can comment when we comment. The only thing you can't do because you don't have a quorum is make a recommendation or vote. So we'll still hear from you. We'll have your comments.

Another change today is that we are having a court reporter do this instead of recording it and then doing a transcript. So there is a court reporter in Oakland. So if you're speaking, make sure you speak up.

So, good morning, everyone.

ADMINISTRATIVE LAW JUDGE CASTILLO:

We have a question from Ms. Dalton

ADMINISTRATIVE LAW JUDGE GIBSON:

Can we do introductions first ---

MS. DALTON:

Of course.

ADMINISTRATIVE LAW JUDGE GIBSON:

And then we'll do your question?

MS. DALTON:

Of course.

ADMINISTRATIVE LAW JUDGE GIBSON:

I just want to make sure the court reporter doing the transcript knows who's talking.

So, good morning. My name is Margaret Gibson. I'm the division presiding administrative law judge at the Office of Administrative Hearings for Special Education, and I will be chairing the meeting at this location.

What I'd like to do first is go from location to location and have the members of the committee introduce themselves along with the OAH representatives that are at each location, chairing the meeting from each location.

So I'll start here to my right.

MS. CORR:

Hi. Good morning. My name is Lisa Corr. I'm an attorney with Young, Minney & Corr, representing Sacramento.

MS. SAVAGE:

Roberta Savage. I'm a student's attorney.

ADMINISTRATIVE LAW JUDGE GIBSON:

Let's go to Oakland next.

MS. HALEY:

Hi. I'm Jennifer Haley. I'm an analyst with the Special Education Division. I'm chairing here in Oakland.

Start with you, Ms. Dobel.

MS. DOBEL:

Kathryn Dobel. I'm an attorney for students in Berkeley.

MS. HOOKS:

Rochelle Hooks, representative for schools of Castro Valley.

THE INTERPRETER:

I'm Elizabeth Bryce. I'm a Spanish interpreter.

ADMINISTRATIVE LAW JUDGE GIBSON:

Let's go to Van Nuys.

ADMINISTRATIVE LAW JUDGE TULLY:

I'm Presiding Administrative Law Judge Marian Tully. I have with me today Administrative Law Judge Brian Krikorian. Ms. Bliziotis is on her way but not here yet.

We have three -- two observers and an interpreter standing by.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you. Peter Paul?

ADMINISTRATIVE LAW JUDGE CASTILLO:

My name is Presiding Administrative Law Judge Peter Paul Castillo with the Office of Administrative Hearings.

MS. DALTON:

And I'm Margaret Dalton, and I'm a student attorney.

ADMINISTRATIVE LAW JUDGE GIBSON:

Wonderful.

Ms. Dalton:

-- oh, sorry.

ADMINISTRATIVE LAW JUDGE CASTILLO:

And we have a Spanish interpreter off screen in case needed.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you. If anyone needs an interpreter, this would be a good time to motion towards the chair in your location, and we'll have the interpreter start interpreting. If you do not need an interpreter, don't worry about it.

Anybody here need an interpreter?

All right. All right. Ms. Dalton.

MS. DALTON:

My question was really a procedural one. So I understand that we don't have a quorum in Southern California. But since it's a statewide committee, I'm wondering why that only affects the ability to make recommendations or vote from anyone here from Southern California, which I guess is me that ended up.

ADMINISTRATIVE LAW JUDGE GIBSON:

So weirdly, the way that the regulation is written, these are two meetings held simultaneously -- one meeting in Southern California and one meeting in Northern California that we are allowed to hold simultaneously.

So because of that weird piece in the regulation, they're technically two meetings.

MS. DALTON:

Understood now. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. So is everyone -- does anyone object to -- do any of the committee members object to the chairs at each location as we've identified being Presiding Judge Castillo, Presiding Judge Tully, Jennifer Haley, and myself? We all okay with that?

MULTIPLE SPEAKERS:

Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Great.

All right. So as I've said, we've got a court reporter. We also have some OAH staff here in our meetings. So I thought we would go around and introduce OAH staff that is at the meetings. I'll start with Sacramento.

MS. BOOMER:

Hi. I'm Alicia Boomer. I'm staff attorney for OAH.

MS. BROWN:

Hi. Anna Brown. I'm the office technician, OAH.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anybody else in Oakland?

MS. HALEY:

No. Just me.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys, I think we did your introductions.

Is there anyone else in San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No one in San Diego.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Fantastic.

So we have several members -- I'm now on Agenda Item 6. We have several members whose term is ending this fall. I am showing Kathryn Dobel, Lisa Corr, Roberta Savage, Monique Watts, Sophia Bliziotis, and Margaret Dalton. You can serve two consecutive terms. You are off a term, and then you can come back. If we don't have enough applications, we will absolutely consider allowing people to do a third term in a row.

We will be doing the application period from July 15th to August 15th. The information will be on our website. You can fill out an application if you'd like to continue. Anyone listening, anyone who is not a current member, we encourage new members.

The majority of our committee is to be made up of parents of students with disabilities or people who work with parents and/or students with disabilities. I highly encourage any student with a disability over 18 to apply.

So that will be happening soon.

The term of the people I said is going to go through the October meeting. And so any new people would start for spring 2020.

Is there any discussion in the Sacramento public regarding that?

MR. CALDERON:

I don't mind before --

MS. HALEY:

Sorry. We can't -- it's a little unclear on the microphone for the court reporter.

ADMINISTRATIVE LAW JUDGE GIBSON:

Do you mind standing up and coming a little closer?

MR. CALDERON:

I've applied before -- my name is Alfonso Calderon. I'm a parent/student advocate.

And can you tell us a little bit about the screening process, how they're selected? Is that possible?

ADMINISTRATIVE LAW JUDGE GIBSON:

Because you're making public comment, you can only comment. If you would like to contact Anna Brown after the meeting, she can talk about that with you.

MR. CALDERON :

Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any comments in Oakland?

MS. HALEY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment in Oakland?

MS. HALEY:

No public here.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys, any public comment?

ADMINISTRATIVE LAW JUDGE TULLY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego, any comment?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comments from here.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No public comment either.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. I'm going to move on to Number 7, "Expectations of Members."

So for members of the committee, the expectation is that you will come to the meetings. I understand that sometimes life and work gets in the way. We would very much appreciate it -- and I realize I'm talking to the choir for the people who are here -- if the people who are on the committee can make the meetings.

I also appreciate agenda items. We had a few agenda items for this meeting, and welcome any and all agenda items that fit within the purview of the Advisory Committee.

Does anyone in -- at Sacramento have any comments regarding the expectation of members?

UNIDENTIFIED FEMALE SPEAKER:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comments regarding that?

Oakland?

MS. HALEY:

No comment.

MS. HOOKS:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. So the overview of -- pardon?

ADMINISTRATIVE LAW JUDGE CASTILLO:

Just coughing.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. The overview of the Advisory Committee meeting process -- thank you all again for coming. What we're going to do is a little bit of what we've been doing. We're going to have a topic. The committee members will be able -- I'll give probably a short introduction. We'll be able to have a robust discussion between the committee members.

At the end of any topic, any committee member where there's a quorum can put forth a recommendation for OAH to consider. OAH will consider your recommendations and then get back to you regarding whether OAH intends to adopt or not any recommendations.

Members of the community, obviously, are welcome to the meetings. We encourage people's attendance. I will try and remember to have public comment for every single agenda item. And then at the end, there will be time for the public to comment on non-agenda items.

Because the items that you're talking about at the end are not agendized, I will likely not be able to respond. It will be more of just a public comment period.

Does anyone -- oh, I also expect that the committee members are familiar with the Open Meeting Act. You were all sent a copy. There's also a copy at the locations.

There's some rules about what we can and can't do. And I want to remind members that we can't have anything called a "serial meeting" where, you know, you talk about items that are part of the Advisory Committee with each other on multiple phone calls. We need to discuss any items here openly and in front of the public.

Any comments in Sacramento regarding the expectation -- the overview of the meeting process?

UNIDENTIFIED FEMALE SPEAKER:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. HALEY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. I just talked about the Open Meeting Act. If anyone has any questions about how we're implementing the Open Meeting Act or a question about what we're doing today or if they didn't get a copy or you want to talk something about it, this would be the time to do that.

Anything in Sacramento on Agenda Item 9, which is the Open Meeting Act?

UNIDENTIFIED FEMALE SPEAKER:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. HALEY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. I would like to propose -- now we're on Agenda Item 10, "Setting of dates for future Advisory Committee meetings."

It is dawning on me, as I have done a few of these, that floating dates aren't working very well for people. So I would like to propose going forward that we meet on the third Friday of May and the third Friday of October.

We will still put out notices regarding these dates, but then people have a better sense of when it is. They're not waiting for two months before to find out when it is.

I'd like to open that for discussion, but I think set meeting dates would be better for our committee. I am also open to discussion on which they are. I randomly picked the third Friday of May and the third Friday in October.

So I will start with -- let's start with Oakland, just for fun.

MS. HALEY:

I believe you have a comment.

MS. HOOKS:

Yes. That -- the third Friday in May tends to be college graduations. So maybe consider a different third Friday.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything else from Oakland?

MS. HALEY:

No. That's it.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Any comments from San Diego?

MS. DALTON:

Are we talking about simply the dates? Is the time -- should we assume the time is still going to be 10:00 to 1:00? Because then I don't have a comment.

If it's not -- if it's going to be afternoon, I do have potential conflicts.

ADMINISTRATIVE LAW JUDGE GIBSON:

Time still -- I'm not proposing a different time.

MS. DALTON:

Then no comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sacramento?

UNIDENTIFIED FEMALE SPEAKER:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Would anyone like to make a recommendation regarding holding the -- I'll tell you what. I'll make a recommendation that -- well, I'm not technically -- never mind. I won't.

Does anyone have a recommendation on what the dates are for our meetings?

MS. CORR:

I'll make a recommendation that we do October and April instead to avoid graduation time.

ADMINISTRATIVE LAW JUDGE GIBSON:

I'm going to say OAH's concern with that is spring break.

MS. CORR:

Oh, that's true.

ADMINISTRATIVE LAW JUDGE GIBSON:

What if we did the second in May -- the second --

MS. CORR:

That's Mother's Day weekend.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oh, Mother's Day weekend. Okay. And I don't want to run into Memorial Day weekend either. Welcome to my life in trying to schedule these meetings.

MS. CORR:

First of May?

ADMINISTRATIVE LAW JUDGE GIBSON:

They could be a Monday.

MS. SAVAGE:

Mondays actually are usually easier for me, but.

ADMINISTRATIVE LAW JUDGE GIBSON:

So we could do the third Monday in May and the third Monday in October if people want to talk about that.

MS. CORR:

I'll just say May is just bad for all of us who are representing students or families or districts because in addition to, let's say, college graduation, we all have IEP after IEP after IEP in addition to the hearings.

So if I were to propose, I would say June, if it was the third of June. And I know there's more vacations that we have to grapple with, but maybe less so than our work schedules.

ADMINISTRATIVE LAW JUDGE GIBSON:

And the regulation requiring this meetings says one in the first half of the year and one in the second half of the year. So the regulation is pretty flexible as to when we would do things.

So let's here from Oakland. Do you have any comments about what we're talking about?

MS. HOOKS:

I also make a recommendation for the month of June as well.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything from San Diego?

MS. DALTON:

No.

ADMINISTRATIVE LAW JUDGE CASTILLO:

Nothing.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. So how about in Oakland, you make a clear recommendation for both meetings and the time -- not the time, the -- where it's anchored in the month.

MS. HOOKS:

I make a recommendation for the third Friday of June and the third Friday of October.

MS. CORR:

Second.

ADMINISTRATIVE LAW JUDGE GIBSON:

That's a second from Lisa Corr. And, oh, can you all speak when you talk. I forgot that. Poor court reporter. My apologies.

MS. SAVAGE:

I have a question.

ADMINISTRATIVE LAW JUDGE GIBSON:

Name.

MS. SAVAGE:

Oh, Roberta Savage. So my question is are we just setting these for the Northern California ones, or are we setting them for the Southern California since there's no quorum to make a change there?

ADMINISTRATIVE LAW JUDGE GIBSON:

They would be simultaneous, and OAH gets to determine when the meetings are. This is merely a recommendation. And I wanted -- before I made a change, I wanted to make sure it worked for bodies.

So all right. So we have a recommendation and a second. I want to now take public that we have the meetings the third Friday in June and the third Friday in October. I'm now going to take public comment regarding that. I will start in Sacramento.

Is there any public comment regarding that?

None.

Any public comment in Oakland?

MS. HALEY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment in Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment in San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. OAH will take recommendation under advisement, and we will respond to them.

Oh, yeah. I guess we should vote. No, it says right here "vote" on my slip. All right. Let's vote.

So -- no. Let's vote. Sacramento -- and we'll do a roll call vote, so you need to say your name. How many for this recommendation?

MS. SAVAGE:

Roberta Savage.

MS. CORR:

Lisa Corr.

ADMINISTRATIVE LAW JUDGE GIBSON:

Those are for. Any votes against?

No.

Oakland, how many votes for?

MS. HOOKS:

Rochelle Hooks. Yes.

MS. DOBEL:

Kathryn Dobel. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. No one in Van Nuys and no one voting in Sacramento (sic). That's a unanimous vote. The vote passes, and OAH will consider the recommendation.

All right. The "Scope of Advisory Committee function within the regulatory mandate."

I wanted to talk about that a little bit because occasionally -- well, pretty often, I get requested agenda items that are not within our regulatory mandate. The regulatory mandate for the Advisory Committee -- grab it here -- is that the Advisory Committee provides nonbinding recommendations regarding revisions to OAH's website, forms, documents, procedures, and policies as provided within the regulatory mandate establishing the Advisory Committee.

And often, I am getting repeated requests for agenda items that are outside the mandate. For instance, people would love a second peremptory challenge. They just would really like one. So I keep getting Advisory Committee suggestions about having a second peremptory challenge.

The peremptory challenge is not something I have jurisdiction over. It's not a policy or a procedure of OAH. There is actually a legislative mandate for that in the -- in the APA.

So as you are -- my request when you are making a recommendation for a agenda item is that it's within the scope. I guess we're moving a little bit into Agenda Item 12 here, just so you know.

So when you -- make sure it's within the scope of the Advisory Committee. So what's happening is sometimes people are giving me a suggestion, and then we're not putting it on the agenda. And I'm getting feedback that they don't feel heard or that I'm ignoring their agenda items.

So if you're talking about something and you feel like it's not within the scope of a statute, but it might be, feel free with the agenda item to attach a little explanation about why you don't think it's within the scope of something that we're statutorily bound to. There may be ways it's not that I haven't thought of. But I'd like to make sure that the request for agenda items are within the regulatory mandate.

The other thing is is sometimes we talk about something. We have a big discussion. A recommendation is made. Usually, if OAH agrees to it, it doesn't end up on the agenda again. If it doesn't, it can be on the agenda every single time.

My new request is that agenda items, once they're submitted and fully heard, aren't re-added to the agenda for two years if it was considered by the committee, unless there's a compelling reason to reconsider.

It may be that there's new facts that come up, a new decision, a new court decision that came out that would change things. I am not opposed to that. But, generally, for instance, having an extra peremptory challenge seems to come up really often from the same people time after time again.

And so I just want to make sure that our agenda items -- we're truly getting things that are important to the community, things we can do something about, and we're not talking about the same thing time and time again, unless there is a compelling reason to do so.

So that is my piece on this, and I'm happy to open the discussion regarding this.

Why don't we start with San Diego? You have anything you want to talk about on these agenda items?

MS. DALTON:

No.

ADMINISTRATIVE LAW JUDGE CASTILLO:

No discussion here.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Well, welcome, Ms. Bliziotis. Are you -- I heard traffic was terrible this morning.

MS. BLIZIOTIS:

Traffic was, and then sometimes life intervenes as well, and I apologize. I'm punctual, typically.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you very much. We just basically started with introductions and a few things. We did have one vote already. But there is no quorum in Southern California for the Southern California meeting.

MS. BLIZIOTIS:

So I see.

ADMINISTRATIVE LAW JUDGE GIBSON:

So you will be allowed to participate but not make any recommendations or vote. So once we had kind of decided that, we kind of moved forward a little without you. I hope that's okay.

MS. BLIZIOTIS:

Of course.

ADMINISTRATIVE LAW JUDGE TULLY:

And Judge Gibson?

ADMINISTRATIVE LAW JUDGE GIBSON:

Sure.

ADMINISTRATIVE LAW JUDGE TULLY:

Ms. Bliziotis was on the outgoing board. Should she talk to somebody about the reapplying? Because we've already covered that subject.

ADMINISTRATIVE LAW JUDGE GIBSON:

She is through the October meeting. So if you would like to reapply, that reapplication purpose -- reapplication time for next spring is going to be July 15th to August 15th, FYI.

MS. BLIZIOTIS:

Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

So now we're soliciting comments regarding agenda items within the scope of the Advisory Committee and my proposal that once items are submitted and heard, they won't be re-added to the agenda for two years, unless there is a compelling reason.

So is there any comment from Van Nuys regarding that?

MS. BLIZIOTIS:

Could you -- has that already gone around to the other ones?

ADMINISTRATIVE LAW JUDGE GIBSON:

No. Do you want take a minute -- take a breath and hear them?

MS. BLIZIOTIS:

I do. I want to settle in for a moment. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

No problem.

Oakland?

MS. HALEY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sacramento?

MS. CORR:

I have a question. Can you -- this is Lisa Corr. Can you give me the regulation number for the mandate just so I have it for my record? The one you just read.

ADMINISTRATIVE LAW JUDGE GIBSON:

I believe it is --

MS. CORR:

Sorry.

ADMINISTRATIVE LAW JUDGE GIBSON:

That's okay. I just did it. I think it's 5 CCR 3094.

MS. CORR:

Okay. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

I'm -- I'm almost positive that's it.

MS. CORR:

Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

We'll look it up.

MS. CORR:

I can probably do this research myself, but I'll have it in my notes. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

I am almost a hundred percent sure that's what it is.

MS. CORR:

Okay. Thank you so much.

MS. SAVAGE:

So I do have -- Roberta Savage. Sorry. I do have some comments about both of these. And at risk of poking the bear on the peremptory, I'll use that as the example.

When I think about the Advisory Committees that we've talked about the peremptory challenge, I feel like the -- it fits within the mandate because the question, as I have understood it, sometimes was not how many peremptories can we get but the use of them at different times and what's the policy related to it.

So I feel like it's hard. Sometimes when we phrase it, we just have to make sure that we're talking about it in the context of a policy, even if it's an unwritten policy. So you might not have something in writing, but that person who's presenting it is saying it seems like this happens all the time. It seems like it's a policy.

So I worry that if we say it's within the scope, people are going to not bring up issues that really are justified to bring in here, so I would worry about that.

I'd worry about the two years because I think back to our meeting last May where we had a very ripe agenda, a very robust agenda, and we didn't get through a lot of it. And then I don't know that we continued to get through it.

So if we are -- if we don't effectively manage our time and deal with things and then we push it off but then we can't come back to those issues. Or people don't feel like the point of what they were trying to talk about was understood.

So I understand kind of keeping -- I would -- those are my comments and concerns about really kind of now creating a policy that says you have to be able to do it this way or that way. That's my comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything else in Sacramento?

MS. CORR:

I guess I would say my -- I thought about the same thing with regarding the peremptory challenge. And I also -- I was like, I don't want to poke the bear on that. But I think that the issue was more about when the judge was assigned and being assigned too late for us to make the peremptory challenges, if I recall the issue. Because now we're going back.

And so, you know, the peremptory challenge, yes, is statutory. But it was the fact that we were finding out the judge -- or actually, no. I'm sorry. The judge was being changed for whatever scheduling needs there were, and then we had lost our ability to make a peremptory challenge because there was a new judge assigned. I think that was part of the issue.

And so I do think that that might have been within the statutory mandate but -- or the regulatory mandate. Sorry.

ADMINISTRATIVE LAW JUDGE GIBSON:

So let me be clear. We can talk about peremptory challenges. Mine was the one I was getting all the time was we would like a second peremptory challenge so that if we made a peremptory challenge before the PHC and the judge changed, after the PHC, we would like a second one.

But there's a statute that talks about how many peremptory challenges you get.

Now people want to talk about when they're being notified for judges so that peremptories can be effective, happy to do that. So I want to be clear. I am in no way banning discussion of peremptory challenges. I should have explained it better.

MS. SAVAGE:

I think Lisa hit it and you've hit it. That's the issue, the timing of it and the assignment of the judges, not after we --

ADMINISTRATIVE LAW JUDGE GIBSON:

Not the peremptory challenge.

MS. CORR:

Right.

MS. SAVAGE:

Because if we used a peremptory but then the judge is -- there's a reassignment after the PH -- I think it's the timing with the PHC --

MS. CORR:

That we've lost our opportunity.

ADMINISTRATIVE LAW JUDGE GIBSON:

And I will be happy because I think there's so much more we can talk about on this topic. And actually, I think this might be a great topic for someone to put on the agenda at the next meeting because I would love to talk about that, but peremptories aren't on our agenda.

MS. CORR:

Exactly.

ADMINISTRATIVE LAW JUDGE GIBSON:

So I hear you. And I think for me, it might be how things are worded that is a -- because wording on these agenda items matters; right? And so if the wording is peremptories after whatever, that's a different story than assignment of judges in relation -- in relation to the timing of peremptory challenges or something.

MS. CORR:

Right. Right.

ADMINISTRATIVE LAW JUDGE GIBSON:

So that's kind of where I'm at with it and making sure that it's not about there's a law regarding something; that it's exactly on point. So maybe it's about having people, as they word items, just make sure it's within how we do things versus what we're stuck with.

MS. CORR:

Yeah. Makes sense.

ADMINISTRATIVE LAW JUDGE GIBSON:

So let's go -- since I've talked, let's go for some more chatting around the room.

Any comments from San Diego?

MS. DALTON:

This is Margaret Dalton. I would just add to maybe in concert with what Roberta said, I was kind of -- the two years bothered me, I guess, only in the sense of if it's two years and then it happens as it was issued and then the year goes by, it becomes three years. I mean, I'm wondering how two years was, you know, the term -- the term as opposed to say one year. Why two?

ADMINISTRATIVE LAW JUDGE GIBSON:

So in my head, we had a couple things that we're talking about a lot because to one or two people, they're really important. But to the bulk of 98 percent of the people, they're not super important. And I worry that our meetings are short and don't have a lot of time.

So I just came up with some language that I thought might work. I am -- the reason we're talking about this is I'm open to whatever people think works.

My issue was I didn't want to be ignoring agenda items from the two percent, right, without some -- some guideline under which we would discuss things. So there is nothing about the two years that is important to me.

There is no scientific database to reason it is. I was just trying to figure out a way for a few of the agenda items that I feel like 98 percent of the people don't necessarily - - we don't need to discuss it again. Because once it's on the agenda, we're, again, having a robust discussion about something.

So I didn't want anyone to feel like I wasn't putting something on the agenda that they were suggesting. And on the other hand, being mindful that we were having trouble getting through all our agenda items previously. And so it was meant to do that.

I am happy at the end of today, either way -- you guys may have a recommendation. You might just all want to think about this until the next meeting and try and hear it out. But that's where I was.

So does that answer your question, Ms. Dalton?

MS. DALTON:

Yes. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

So, Ms. Bliziotis, any comments from you regarding this?

MS. BLIZIOTIS:

Yes. Thank you.

First of all, I want to confirm or say that I'm aligned with what Roberta and Lisa had to say about the issue, using the peremptory as an example.

ADMINISTRATIVE LAW JUDGE GIBSON:

I should never had have used that.

MS. BLIZIOTIS:

There we have it. But I'm also concerned about the length of time an issue is off the agenda and the two years to put it back on the agenda because we oftentimes don't get through discussions. And I appreciate not wanting to spend too much time for the two percent, as it were.

But the time could be shortened, I think it would allow for more equitable process about concerns. Because sometimes concerns come up in a new -- with a new twist, but they really do sound like or framed as the same concern.

Or it's also an attention-getting method to put something back on the agenda because it hasn't been resolved in a manner that the parents' side believes it should be resolved or even the district's side, and it may be the district's side and the parents' side agree that the issue needs to be further explored.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you. I just had another thought.

What if -- what if after the time for the agenda items came in, the agenda was put out to the -- I don't know if we could do that. I'd have to think about it.

Trying to see if there is a way that the committee members could help determine what actually ends up on the agenda or not.

I have -- it's actually whether or not we want to have maybe a chair from -- one from a district's side and one from a parents' side, and they could work together to take the agenda items and to agendize what was on there.

I -- you know, I'm just trying to figure out a good way that people feel they're being heard, that we're not -- that we're spending the right amount of time on the right things.

I agree that there may be issues that need a conversation. And then there's an implementation, and we have another conversation, whatever that is. My intent is never to stifle it but make sure we get through stuff.

So I'm just putting out there I'm open, and we're open here, to whatever solutions that are within the Open Meeting Act and within the requirements of the law.

And it does say that the OAH will work with the members of the committee to set the agenda. We have -- we have defined, so far, by asking for input. Maybe the reality is

is the member work on the agenda and bring it to OAH for, you know, are you guys okay. Then we have a conversation, and we come up with an agenda.

So I'm happy to hear -- and I'm happy to hear comments on the other thing too. It just dawned on me that that might not be a bad solution.

Oakland, we haven't heard from you yet. Let's hear from you guys.

MS. DOBEL:

Kathryn Dobel. I think it's a great idea.

MS. BLIZIOTIS:

What is a great idea?

MS. DOBEL:

To organize the -- your suggestion that we have a chair on school side and student side and that we go through the agenda items with whoever OAH, you know, determines should discuss it with us by E-mail or phone. And then we have -- then I think we're more effective in participating.

ADMINISTRATIVE LAW JUDGE GIBSON:

We would just have to make sure that you didn't -- that you got information but didn't discuss the content of what they were so we didn't have a serial meeting; right?

So the chairs could accept agenda items from everyone. And then we would just have to make sure there wasn't that other piece.

MS. SAVAGE:

And if I can interrupt. You also have to make sure that you have Southern California and Northern California because we have different -- oftentimes, we have different issues. So having the chairs just from Southern California or just

from Northern California, it might not capture everything the whole state needs to talk about.

ADMINISTRATIVE LAW JUDGE GIBSON:

Well, and you guys can certainly make a recommendation that we had a chair from each side in both places to make sure that that happens.

Let's make sure we fully kind of discuss this. I don't want to -- I want to go back around again as people are digesting this.

So Sacramento, let's talk some more.

MS. CORR:

I liked your idea. I think that's fairly typical of how agendas are created. So I think that's a smart idea.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything else from Van Nuys?

MS. BLIZIOTIS:

I agree with what Lisa Corr just said. I think it's a great idea to have a Northern California, Southern California, parent and district side chair. So it would be four chairs all together. So I support that idea.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

MS. DALTON:

I agree.

ADMINISTRATIVE LAW JUDGE CASTILLO:

That's Margaret Dalton.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thanks.

Oakland, anything else you all would like to say?

MS. HOOKS:

This is Rochelle Hooks. Being one of the newest people on this committee, I'm not fully understanding the difference between submitting agenda items to the OAH office to put on this meeting and us collaborating to put agenda items together to give to OAH to put on the agenda.

ADMINISTRATIVE LAW JUDGE GIBSON:

For me, I would say the difference is we have to cull them. Sometimes there are 400, and sometimes there's two. And then OAH may have some agenda items; right? And when there's 400, we're doing the culling; right? So I've got to look at it, and I've got to figure out what I think the most pressing topics for people are.

And I think if -- if you all did it, you all would have a better idea of what the pressing topic is.

Did I say something?

MS. SAVAGE:

I'm sorry. I'm just laughing a great -- more work. We're work friends, but that's okay.

ADMINISTRATIVE LAW JUDGE GIBSON:

It's not that bad.

MS. SAVAGE:

400.

ADMINISTRATIVE LAW JUDGE GIBSON:

Well, only when people are really mad about something, and it's 395 of the same thing, slightly different wording. Generally, it's not that bad. I think, generally, we probably get five to ten items.

UNIDENTIFIED FEMALE SPEAKER:

And do they only come from committee members?

ADMINISTRATIVE LAW JUDGE GIBSON:

No. They come from members of the public. And members of the public are allowed to bring forth an agenda item.

I like the idea that they bring forth to the committee members, and the committee members could have a discussion.

You know, a lot of times we get things that are about maybe Lanterman, which isn't even in the scope of Special Ed. But members of the public, that's a hard -- you know, they see OAH and an Advisory Committee, so sometimes it's figuring out whether or not it's really within the scope of Special Education.

It's -- I would say it's literally probably two phone calls. I mean, I don't think it's a huge thing.

And, you know, the items could still be sent to us, and then we could send them out. Because then you wouldn't have to worry about, like --

MS. CORR:

That would be great.

ADMINISTRATIVE LAW JUDGE GIBSON:

-- other information out. So I think that we -- I want to finish talking about this, but, you know, can't take effect for the next meeting because you guys are going to make a recommendation. Then we have to respond, and then we have to come up with some proposed procedures.

So what we're really talking about is this being in effect for the spring meeting, in all likelihood, because we'll need some time to kind of get this together.

So I think we'd have one more meeting with more -- this would be -- if you voted on this, would be more of the idea. Then we would get back in our response. And then you guys would have to decide how that really worked in probably the next meeting.

MS. SAVAGE:

Makes sense.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. I'm going to ask for some public comments on this. Is there any other member of the committee -- can you raise your hand -- you want to make a comment on it at this point?

No. Okay.

So any public comments on this in Sacramento?

No.

Any public comments on this in Oakland? You have
no public; right?

MS. HALEY:

We have no public.

ADMINISTRATIVE LAW JUDGE GIBSON:

Then I will stop asking that.

MS. HALEY:

Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment in Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON :

And, Peter Paul, you don't have any public?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No, we do.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oh, any public comments in San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No. None.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Are there any recommendations?

MS. CORR:

Oh, gosh. How do you say it? This is Lisa Corr. And I would recommend Judge Gibson's recommendation regarding the committee chairs coordinate to create an agenda to present to OAH.

MS. SAVAGE:

Can I make an amendment to yours? So I would amend that to say that the committee identify two chairs in both Northern California, Southern California, district, and student side representative in each area to take the agenda items, determine which will be included within the next Advisory Committee, and that OAH identify a deadline so that there is plenty of -- all the agenda items go to OAH initially, and there's a deadline. And then the committee has a two-week period or some type of period, and then put that to OAH.

MS. CORR:

What she said.

ADMINISTRATIVE LAW JUDGE GIBSON:

Did the court reporter get that?

MS. HALEY:

Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Is there a second?

MS. BLIZIOTIS:

I second. Sophia Bliziotis, Southern California, van Nuys.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Any further --

MS. HALEY:

Can that be seconded by Southern California?

ADMINISTRATIVE LAW JUDGE GIBSON:

No. Sorry. Can't be seconded by Southern California. Thanks, Jen.

MS. DOBEL:

I'll second it. Kathryn Dobel.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right.

MS. HALEY:

That was Ms. Hooks' catch, by the way.

ADMINISTRATIVE LAW JUDGE GIBSON:

Nice job.

All right. Let's -- it's been seconded. Any more comment before we vote?

Sacramento, anywhere? Public? Members?

No.

Anything in Oakland?

MS. HALEY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything in Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

MS. BLIZIOTIS:

No. No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything in San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comments. San Diego.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Let's take a vote. Sacramento?

MS. SAVAGE:

Roberta Savage. Yes.

MS. CORR:

Lisa Corr. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. HOOKS:

Rochelle Hooks. Yes.

MS. DOBEL:

Kathryn Dobel. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys -- oh, that's it. Okay.

So passes unanimously in Northern California. OAH will respond. And I'm going to take a look at the Open Meeting Act and the -- and our Advisory Committee piece.

And I am not positive, now that I'm thinking about it, that it would have to come one more time if OAH accepts the recommendation. I will -- you'll know in the recommendation when I respond to it.

So I'll respond in the recommendation as part of it, whether we're waiting or whether it will take effect. But I think -- never mind. I'm now going to stop myself again. We'd have to vote on those people, so it's going to have to be on the next agenda.

All right. So it will be on the agenda one more time before it takes effect, if OAH agrees to the recommendation.

All right. OAH new employees and positions. We like to keep you all updated on any new employees we have. You guys have a list. We have some new employees. We have one new judge, Brian Krikorian. He's in Van Nuys.

Do you want to come show yourself on the thing? There he is. There's Brian. He's new. His last name might look familiar. If you are dealing with Judge Krikorian, please note whether it is Adrienne or Brian. I don't think I'm telling state secrets. They're brother and sister.

And Sarah Garcia and Apryl and DeJoin are staff members for case managers out of the Sacramento office.

Anna Brown is new. She's in our -- what we like to call our special operations team. It's Jen and Laurie and Anna. They do a lot of our data and record keeping.

Erica is new. She works in our San Diego office as a case manager. And John Mark works in our Van Nuys office as a case manager. So those are some new names you might be seeing.

We currently have four open positions for judges, one in each office -- Sacramento, San Diego, Van Nuys, and Oakland. We are currently interviewing for those positions.

And a small FYI under new employees, our Van Nuys office is moving sometime this year to Downtown Los Angeles to Angels Flight -- the Angels Flight area, the Wells Fargo buildings. We don't know when yet.

Any comment regarding that item?

MS. CORR:

Sarah Garcia is not the Lozano attorney; is that correct?

ADMINISTRATIVE LAW JUDGE GIBSON:

She is not our new staff case manager. Right. Different Sarah Garcia.

Any other comments in Oakland?

MS. HALEY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Comments is Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Comments in San Diego?

MS. DALTON:

No comments.

ADMINISTRATIVE LAW JUDGE CASTILLO:

None.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment?

Sacramento?

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Moving on. 13 -- 14. All right. So I am super excited to announce that OAH is really moving forward on our new case management system. Woo-hoo.

What we're doing right now is we are getting a consultant who is going to work map all of our work and help us determine what we need in our new case management system. That, we're in the middle of. We're very hopeful that by the end of this year, we'll have the consultant on board who can help us really decide what we need for the next five to ten years. Part of that is finding out from the community what needs you have in interacting with OAH.

And even though I know you would all like CM/ECF-like access to our docket, it will be helpful to first hear from you. And for those people who aren't attorneys, it

would be the -- currently, our secure file system allows you to file things, but it's really like a fancy fax machine. You're not -- you don't get access to the docket. You can't see what the other people have filed. You can't find your motions there. The orders don't live there. It is merely a more complicated, secure way of getting documents to us.

We are semi-hopeful that as part of the new case management system, we may be able to offer some more interaction on a limited basis with the public and our document system.

Also, there's many things we do now with our current case management system - - it's just antiquated. I mean, for anybody that thinks OAH spends taxpayer money widely, which you should not, our case management system is state of the art -- I don't know -- 2001, maybe.

And it's cumbersome. When our presiding judges have to change a judge from one case to another, forget drag and drop. I think there's somewhere close to 20 to 25 clicks they have to make to do it. They have to go into different screens. They have to do stuff.

It is not at all an easy system. It takes a lot of time. It also makes us less reactive; right? If something has to happen right away, we're not just moving things the way, intuitively, you would think computer software works.

So we're very excited about this new -- about having a new case management system. We're hopeful that we keep track with it. And I am -- this is more an informational piece. We'll be looking sometime in '19, '20 to have stakeholder meetings.

MS. SAVAGE:

1920?

ADMINISTRATIVE LAW JUDGE GIBSON:

'19, '20. In '19, '20.

MS. CORR:

She means in 2019 --

ADMINISTRATIVE LAW JUDGE GIBSON:

I'm sorry. 2019, 2020. Yes. We're all going to go back in time. I've gotten ahold of the Infinity film thing.

So yeah. So no. In fiscal year '19, '20, we are going to have some stakeholder meetings. If you are lucky enough to be a part of our regulatory stakeholder meeting, I'm hopeful that they'll be as well received and, I think, as productive as those meetings were.

But we're looking to have members of the public come in and talk to us about what they would like to see, the access that they're interested in. I can't promise that we'll be able to afford or do all of it. But I think having input from people that the system affects is so important in government and in good government. So that's going to be coming.

We will make sure we keep the Advisory Committee apprised of it, but we'll also keep the community at large apprised of it through both our website and our list serve. So just watch for it.

Anything anyone would like to talk about regarding that in Sacramento?

UNIDENTIFIED FEMALE SPEAKER:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Public? No.

Oakland?

MS. HALEY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys?

MS. BLIZIOTIS:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys public?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

MS. DALTON:

No comments.

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego public?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comment from the public.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Item 15, update on the way we schedule mediations.

Jen, can you put that up on the screen for everybody?

MS. HALEY:

I believe Anna has it.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anna?

MS. HALEY:

Or I can.

ADMINISTRATIVE LAW JUDGE GIBSON:

Hold on a minute.

Everybody should have a copy, and there's copies available in the -- in the room.

Okay.

Jen, can you do it kind of quickly?

MS. HALEY:

Yes. One moment.

ADMINISTRATIVE LAW JUDGE GIBSON :

Jen is going to show us the screen for a minute. But can you leave all of us visible at the top or something?

MS. HALEY:

Yes, I think I can.

ADMINISTRATIVE LAW JUDGE GIBSON:

We're trying to get used to this new technology.

MS. HALEY:

One moment. Is that okay for everyone?

ADMINISTRATIVE LAW JUDGE GIBSON:

Yep. So we scheduled -- we changed the way we calendar mediations in November of 2017. We felt -- turns out rightly so -- that there were a lot of mediations being canceled.

At the time, OAH was scheduling mediations for everyone, and then people were canceling initial mediations. We went to a system by which mediations were still calendared by OAH for expedited hearings -- because those happen very, very quick -- the expedited portion of dual cases and mediation-only cases.

All other cases, the parties were -- are asked to fill out a form, pick a mediation date, and if at all possible, we'll give it to them, even up to the day before.

We've also started mediating on Mondays and Fridays. That has been, I think, a pretty good success. We have a lot of mediations calendared on those days. And as you can see, the amount of canceled mediations is a third of what it was prior to the change.

When I explain to you what it takes to change a judge, it's the same thing to cancel a mediation. There are just -- it's a huge amount of work. That has really allowed us to run a little more lean.

Our cases have gone up from -- 2012, 2013 I think we had around 3500 cases a year. This year, we think we're going to have 5,000. We are doing it with almost the

same number of staff. We have a little more staff, but certainly not proportionally a large amount of staff.

So becoming more efficient in what we do has been really important. But we also wanted to make sure that we were stilling meeting people's needs with mediations.

You'll see that from 2017 to 2019 with the mediation change, we are still going up every year in the amount of mediations held. So we have not decreased -- so the effective change wasn't to decrease access to mediations. The number of mediations is still going up.

We took data from January, February, March, and April of each year. And you can see that in 2017, the number of canceled mediations has gone down. The number of rescheduled mediations has gone down. And quite frankly, the number of people who are reporting settled and withdrawn has gone down.

We're not so sure that these are a hundred percent the right reasons. These are kind of what people say when they call. Some law offices have kind of predone forms where they send them in.

So my -- the reliability of the reason things are canceled is probably affected a little by how we collect that data and what people happen to tell us when they call. This is not a -- you know, don't live and die on this.

Also, please don't panic about staff error. Staff error shows a 7.61 percent. When someone opens something and they put it -- let's say they're opening it and they're scheduling a mediation for you guys -- you guys have asked for June 4th. If they accidentally click June 3rd on the calendar, realize it at that exact moment, and do June 4th, June 3rd is still going to show as canceled by our staff.

So it's not errors like people showed up somewhere or something happened. It has to do with the data entry and the way we do our data entry. And even if they recognize at the moment it happens, that's how it is.

We know that there's a lot of very legitimate reasons people cancel mediations. Sometimes the parties have worked together, and they don't need to go to mediation. They're well on the road to settlement. That's fantastic.

Sometimes somebody's sick. Sometimes the parties are talking, and they realize somebody needs to go see a placement. Or they need a little more time before they can do things, and they cancel it. We're fine with that. We expect that to happen. There's some level of that that happens that works with the best intentions of parties.

From OAH's perspective, we think this has been very successful. We very rarely tell people we can't take a mediation unless it's on a Friday or Monday. I think you'll find that Monday and Friday requests are definitely not -- not offered as often as maybe people would like. But those are PHC days, and we've got to make sure we have enough judges in the office to handle PHCs.

We try and meet most of our requests. People are getting mediations a day or two in advance where we can. Our commitment was ten business days beforehand, we'll give you the mediation. And I think we're really, really able to do that without a lot of problem.

We think it's been super successful. We are all also calling unrepresented parents or districts if they filed a case and a mediation hasn't been scheduled. We're calling them to invite the scheduling of mediations. That's working very well.

So that's OAH's update on it. And now I'd like to hear from you all on your opinions of it.

Why don't we start with San Diego?

MS. DALTON:

No comment.

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comment from San Diego.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. How about Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

How about Oakland?

MS. HALEY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

How about Sacramento?

MS. SAVAGE:

So this singular -- this is Roberta Savage. This is one of the singular things that drives me crazy in my practice because when we had a mediation date, we had a date set. And the amount of time I now spend in my practice scheduling a date or rescheduling with someone or altering it or identifying a hearing date, it has caused me a -- increased my practice.

So I am unhappy that it's going well for you, for OAH, because it has caused so much increased work on just scheduling and the difficulty in scheduling, not with everybody, but with some and how much of a delay it then creates.

So I'm glad that it's streamlined your process. And I'm not being, like, sarcastic about that. But from my office personally, this has been a very difficult change.

ADMINISTRATIVE LAW JUDGE GIBSON:

Can I ask you a question?

MS. SAVAGE:

Sure. Absolutely.

ADMINISTRATIVE LAW JUDGE GIBSON:

Our data earlier showed that almost -- I can't remember what percentage of initial mediations went away. And then the parties set their own second mediation day.

Were you one of the rare offices then that went on your first mediation date? Because otherwise, you would have had to do all this work anyway.

MS. SAVAGE:

Right. So the difference --

ADMINISTRATIVE LAW JUDGE GIBSON:

Which you could be.

MS. SAVAGE:

Yes. So I did. We would go unless someone was unavailable. But what I found is that people aren't working on it.

So there are some offices that are great about responding and getting to it. But just having that mediation set made every other office work quicker to it.

So it's a delay. So now, I'm in the position of not dealing with a mediation date on a regular basis until it's closer to the prehearing conference date, which then creates a whole bunch of other work for my clients.

So that mediation date just made everybody work quicker. "Oh, I can't do that date. Let's reschedule it." That was much simpler than, "Oh, hey. Oh, that's right. We've got to get that set. Oh, that's right. Oh, oh." And now we're a week out of PHC, and I might have to file it, knowing I'm still mediating. So that part of it has created a significant amount of work.

ADMINISTRATIVE LAW JUDGE GIBSON:

So I want -- I'll respond a little bit to that because one of the other pieces that was huge for us was we didn't know which of the scheduled dates were fake.

So here was the problem. It's a week before the mediation. I've got PJs who have to make judges show up places. And we didn't know which were fake and which weren't. And so we could not get the calendaring done. So people would be scheduled to be all over.

I go back to if all of the mediations were in our office, I don't care that 40 percent of them are going to go forward because I don't care what 40 percent show up at my office; right? I can have a judge waiting in a room. And whoever happens to show up gets the mediation. I can cover it.

Because I have to send people out everywhere, our piece is -- I'm just kind of giving the companion piece to what you're saying was -- we didn't know which were the fake ones. So we couldn't keep up on that calendaring. Because let's say we had somebody going to Fresno, Hanford, Lemoore, and then it turns out the Hanford and Lemoore were fake but the Fresno wasn't, but the other ones are in wherever. We couldn't do it.

So what -- I absolutely hear your concerns. And I am not unopposed to other solutions that don't involve pretend dates on our calendar. And that was the big hard thing for us was you all knew. You know, in your mind, you know what's fake and what's

not on your calendar because you know, "I called that attorney. I'm pretty sure they're going to agree. They always agree to it. I know that this person is so busy that they're not even going to get back to me until after the date," or whatever. But we don't know that. So that's our underlying driver for this.

So I just want to get that out there so as you guys are thinking about, we never intended this to be the be-all/end-all. I am happy to discuss mutations of this, fixing it, going back and looking at it.

So that's our driver. I hear your driver. We're going to keep listening to people, but I wanted to get that second piece out.

Any other comments from Sacramento?

Let's go back and see if there's more comments because I talked some more.

In San Diego?

MS. DALTON:

No.

ADMINISTRATIVE LAW JUDGE CASTILLO:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. HALEY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Now let's hear from the public.

Let's do public in Sacramento. Is there any member of the public who wants to be heard on our scheduling process?

UNIDENTIFIED MALE SPEAKER:

No.

MS. SHERLOCK:

I do, yes. Do you want me to stand up?

ADMINISTRATIVE LAW JUDGE GIBSON:

Do whatever you'd like. Just get to the microphone. Also identify yourself.

MS. SHERLOCK:

Hi. This is Anne Sherlock.

ADMINISTRATIVE LAW JUDGE GIBSON:

You don't have to, but.

MS. SHERLOCK:

Oh, I don't have to. Well, too late.

So I think my comments are -- I concur with Roberta on a lot of the logistics and how much time it's taking for us to schedule mediations.

And the other thing is I'm curious to know -- I also find it's really difficult -- when attorneys are involved, typically, it's easier to schedule mediations. We understand the process.

When parents are unrepresented and, again, I'm an attorney for school districts, it's very difficult to schedule mediations with unrepresented parents because a lot of times, they don't understand the process.

And so I find it -- I worry that we're missing out on mediation with -- when parents don't have representation.

ADMINISTRATIVE LAW JUDGE GIBSON:

So under this process, you guys are welcome to call us and say, "We're trying to schedule mediation with Ms. Smith. Can you guys give them a call? And can you guys help us schedule?"

We are happy to assist with unrepresented parties getting the mediations scheduled.

MS. SHERLOCK:

And we have used that. I have personally used that process where OAH has contacted the parents. I think that when it came out on a scheduling order that "Here's your mediation date. Here's your

prehearing conference date. Here's your hearing date," it felt more mandatory, which led to more resolution of cases as opposed to an invitation to a schedule a mediation. So that's my comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comment from Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any from San Diego?

MR. SCHWARTZ:

No comment.

ADMINISTRATIVE LAW JUDGE CASTILLO:

None.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Are there any recommendations? Do you want to talk about this a little more? I mean, I don't want to leave this unresolved because I feel like there may be a different middle ground. We may just not know it yet.

MS. SAVAGE:

So I was just -- this is Roberta Savage. And I -- literally just thinking of something. You know, what if it -- and it's another process, and I get that. Not always great. But what if you file something -- so I file as a student, so we have a longer time period.

But within -- you know, most districts are identifying a representative, their attorney's stepping in within the week, unless there is someone out of the office. And what if OAH had a process where within two weeks of the filing, the parties have to work together to identify a mediation date, hearing dates. We put it on a form kind of like a joint CMC in federal court, and we submit that to OAH so that we have to do this, and then you schedule for it. You may send our initial scheduling order and do all of that.

But again, it's something that there's a timeline, there's a deadline, but there's not a bunch of other work, you know, substantive work that goes into it for the parties to then set up their case.

ADMINISTRATIVE LAW JUDGE GIBSON:

So here's my concern. California education law requires that we make mediation available up to and including during hearing. So I would have a problem saying what would be the -- so what would be the -- what would be the give if somebody did it; right?

So if I said you guys, within the first two weeks, should do this. I mean, I can't get people to do the ten-day one, and I thought that was pretty casual. here's no hammer; right? And so it's like when your 15-year-old -- you know, as a parent, you want to make sure that you're giving things that can be enforced.

And I'm just saying that would be my concern, is I have no hammer --

MS. SAVAGE:

Right.

ADMINISTRATIVE LAW JUDGE GIBSON:

-- to do that. I mean, if someone wants to get a reg done, have at it. But I agree with you. A deadline for people would be helpful. We struggled with that when we were coming up with the process, which is why we ended up saying we'd love it ten days before because we can pretty much guarantee you your date. But we can take it up and, quite frankly, issue them mediations voluntarily and people can ask for hearing.

The other thing I will tell you that I'm thinking of in the new case management system -- and I'm not saying this is going to happen. Please never quote me.

One of the things in my dreams is there's a calendar, and you all can take empty spots. So in my dreams, we say how many slots we have available for mediation in whatever city -- in Northern California, Southern California, whatever. And you all can just grab spots.

I am not saying that technology exists. I'm not saying we can afford that technology. But that would be great for everybody, I think. But we're talking, at best, three, four years from now. And that's assuming that I have not made up weird start-up technology that no one can do.

But I'd love to be able to tell you guys how many slots there were. You people can grab a slot. Then you could grab a slot for a case and just tell the other side, "Hey, I was able to grab June 19th."

MS. SAVAGE:

But then you get the ghost dates again, and you get more open spots where we can use it --

ADMINISTRATIVE LAW JUDGE GIBSON:

Well, and that's why --

MS. SAVAGE:

They go in and they just grab --

ADMINISTRATIVE LAW JUDGE GIBSON:

The good ones.

MS. SAVAGE:

Right.

ADMINISTRATIVE LAW JUDGE GIBSON:

And that's why we really had to talk about this whole second mediation and if you cancel mediation. That was really one of the things that made this work, which is, if you cancel mediation without a good reason, you might not get a second one. And that has slowed down a little.

Now, people get sick, stuff happens. You know, kids are home sick. People have to cancel. But "I was just holding it as a ghost date. And I had scheduled three that day, and I wanted to see which one goes forward," our obligation is to make mediation available to you, not that you mediate.

So this may be something we talk about again at the next meeting even though we talked about it at this meeting. But I am open and happy to discuss ways that we can make everybody's life easier in the community, taking into account everybody's issues. I'm just as at a loss for --

MS. CORR:

Would it be easier for an unrepresented party to just get an automatic date for mediation?

ADMINISTRATIVE LAW JUDGE GIBSON:

Everybody is unrepresented at the start is the problem.

MS. CORR:

From the parent's perspective was what I mean. Like, so if a parent files unrepresented, pro bono, that scheduling order is treated almost like the order where it comes out with an automatic date. Because I -- I agree with what Anne said, that oftentimes it is much harder for them. But if they see that they get a scheduling order with a date, they're more likely to participate.

ADMINISTRATIVE LAW JUDGE GIBSON:

Let's talk about that for a little while. I don't know what that impact is. I'd have to go back and have somebody pull the dates for parent -- for parent -- unrepresented parents filing a case and what the cancellation rate looked like before on an initial date. I don't know what that is off the top of my head.

I think -- let's talk about it. You guys want to make a recommendation, making a recommendation.

Roberta?

MS. SAVAGE:

I have a lot of families who file mediation only mediation only. And they do it to get that date because it's a date set and everyone's got to be there. And they are reluctant to change it, but they are so -- like, it's great. We have it. Everyone's got to be there. And it makes it effective immediate.

So I can see -- I'd like to have it in all cases, but I can see understanding if there's an issue. And I think we brought up the issue of unrepresented parents and they're -- if they are already adverse to the district, and I'm trying to work with someone on scheduling might seem counterintuitive to them for a mediation.

So that might make a lot of sense for unrepresented parents so that they -- they knew, like, that's just part of the process as opposed to attorneys who regularly do this or school districts who just know that's part of the process. You've got to get it scheduled.

MS. CORR:

Right. You know, like, they'd often say, you know, they say, "I am available, but it's X date." And that's after the hearing date. And you're trying to explain, but that would be against the purpose of us mediating. So there's a lot to explain.

And if they don't trust you to begin with, it's -- it can be very hairy to try to schedule.

ADMINISTRATIVE LAW JUDGE GIBSON:

So my ten cents on that is I would want to see then -- if you all make this recommendation, we considered it, I'd want to see a fairly big commitment on the side of districts' attorneys that if we're doing to do that, that there would be some consensus on that part to say that we'll do everything we can then to show up there.

What I worry about is there's many district attorneys with really impacted schedules. Because parent attorneys and parents -- parents have one case; right? Parent attorneys have -- I don't know -- let's say ten cases. And district attorneys have 4,000 cases; right? So --

MS. CORR:

4,001.

ADMINISTRATIVE LAW JUDGE GIBSON:

Right. So to me, an unrepresented parent is far more likely to keep the first date based on the parent schedule; right?

The real issue is what's happening on the side of the school district attorney or the school district, and is their calendar -- so to me -- and I'm not saying we want people to sign anything in blood. But I want to see a willingness and an ability come forward on the part of school district attorneys or school districts who are

unrepresented to be able to say, "We'll make that date a priority for us," so that doesn't become a ghost date.

You'll see in what we talk about in a few minutes that the number of unrepresented parents isn't -- isn't such that it would be undoable. It would only become undoable if those dates weren't kept for us.

So that's my -- that's my ten cents on it.

MS. CORR:

Maybe here's an alternative suggestion. Perhaps allowing a school district attorney to file a request for a mediation with regard to an unrepresented party, like, basically indicating that they've made multiple attempts to reach out to the party, that the parent has been unwilling or unable to respond, and therefore, we're just asking OAH to calendar.

So perhaps it's not an automatic -- like, not a ghost date. But we're suggesting a date, and we're saying, "We'd ask that you put it on calendar." And the parent can always respond by saying, "No, I don't want to mediate."

MS. SAVAGE:

So the only thing I would say is I think Judge Gibson said when Anne was talking, they already will contact. If a district side says, "Hey, I'm trying to get this mediation set, and this parent doesn't understand the benefit of it," they already have the ability without having all this paperwork to then contact the parent.

And I would wonder how effective that is in then getting mediation date set.

ADMINISTRATIVE LAW JUDGE GIBSON:

I don't even think you need to go that far. Now, let me be clear. If there's a case file of unrepresented parent files a case or the district's filed a case against an unrepresented parent and the district wants mediation, we can be called first.

So you don't even have to make -- so if the relationship is such that you all feel like it would be better that OAH -- first of all, if people need an interpreter, we have interpreters available. We can do help do that. We are truly a neutral body making an appointment. I don't think people need to wait.

Same thing, quite frankly, with an unrepresented parent. If they want to get a mediation date on calendar and they don't want to call the district and deal with the same person that they feel, like, some animosity toward for some reason or something, we can be the first step.

And maybe we can do a better job in our scheduling order of letting people know that we are and can be the first step.

MS. CORR:

But you won't schedule it unless you've got both parties in agreement, which is -- so it's a little bit slightly different than what I was saying is if we sent something and said, "We can't get the agreement. We're asking you to put a date on calendar. We're asking you to set the scheduling order," which, admittedly, they might say, "We won't go." But --

ADMINISTRATIVE LAW JUDGE GIBSON:

But if they don't say they don't go, now I've got a problem. Because now I'm sending a judge on a three-day trip to Quincy; right? Because they got to drive the day before, they've got the day, and the day home for something -- because we won't go if there's not full confirmation.

So, again, if it was in our office, I don't care. But with good reason, they're not. And I'm not saying you guys can't make that recommendation. I'm just trying -- I'm trying to make this process more interactive. For a while, I felt like this process was you guys talking and us thinking later.

So if this isn't working for you all, I'm trying to have more of a -- I don't want to discourage. You guys can make any -- regardless of what I say, make any recommendation you want. Please don't take me saying, "Well, there might be this issue" as me discouraging anyone from making any recommendation they want.

I'm just trying to give you some insight into our thought process.

So do you guys have any suggestions on the calendaring? Kathryn or Rochelle or Sophia and Margaret? Like how this could work to improve it?

MS. DOBEL:

No comment.

MS. BLIZIOTIS:

I mean I don't think I'll -- I would have an answer to --

ADMINISTRATIVE LAW JUDGE TULLY:

Okay. So did you hear Ms. Bliziotis' comment?

ADMINISTRATIVE LAW JUDGE GIBSON:

Yes. And so --

MS. HALEY:

I'm sorry. Can we have that comment repeated, please.

MS. BLIZIOTIS:

This is Sophia Bliziotis. I actually appreciate the complexity in hearing this out in light of OAH not wanting a ghost date and because it's so dispersed where mediations happen. There's not a central place.

But I actually want to talk to the person who handles calendaring in our office. I want to pick the brains of my colleagues to really think through if there's another structure that could be proposed as a recommendation. Because I do think it's fairly complex to satisfy both unrepresented parents, OAH's scheduling needs. I certainly do - and parents' side.

I certainly do love the idea of the grabbing the space on a master calendar of -- you know, you can see what's available, like booking a hotel room.

So I just --

ADMINISTRATIVE LAW JUDGE GIBSON:

Again, that's like Star Trek. Doesn't really exist.

MS. BLIZIOTIS:

It does, though. It exists for hotels and campsites.

ADMINISTRATIVE LAW JUDGE GIBSON:

You know, it very well may. You know the one thing I was just thinking, maybe this is such a complex, discrete issue that maybe it makes sense for me to schedule a meeting to just talk about this where we can have more members from both sides and parents and a bunch of people, kind of like our stakeholder meetings --

MS. CORR:

We can bring our staff.

ADMINISTRATIVE LAW JUDGE GIBSON :

Yeah. Your staff could come. And maybe we sit at a bunch of tables. I can do a Northern California and a Southern California, kind of like we did the reg ones. And have people sit -- because I thought one of the most valuable things that those regulation meetings were people sat in a group with people with disparate needs; right?

So we had a student attorney sitting with a parent sitting with a district person sitting with a district's attorney. And they needed to work out, right, what they thought would work.

If -- it -- maybe that's the answer for this. And I'm happy to take a recommendation that we set up a meeting to really talk about this. And I would like my PJs there because they're the people that do the calendaring, so they know what the deadlines are for not knowing things are happening and that kind of thing.

But I'd love to have a real robust --

MS. BLIZIOTIS:

Am I allowed to make a recommendation?

THE COURT:

-- knowledgeable.

MS. HOOKS:

So this is Rochelle Hooks from Oakland. And I'm making a recommendation that this subject be discussed in a regulation meeting to come back with recommendations for this Advisory Committee.

ADMINISTRATIVE LAW JUDGE GIBSON:

And I just want to be clear. I didn't actually -- it's not called a regulation meeting. We had a meeting about that.

MS. HOOKS:

Sorry.

ADMINISTRATIVE LAW JUDGE GIBSON:

You mean that we have a meeting of the stakeholders?

MS. DOBEL:

Yes.

MS. HOOKS:

Yes.

MS. SAVAGE:

Can I just amend that to make sure that we're dealing with all the calendaring issues, not just the calendaring of mediation? Like, if we would add what calendaring issues exist for scheduling of mediations and hearings and PHCs and all of that and use that as a stakeholder meeting.

ADMINISTRATIVE LAW JUDGE GIBSON:

Is that okay with you, Rochelle?

MS. HOOKS:

Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Is there a second from Northern California?

MS. DOBEL:

I would second. Kathryn Dobel.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Now let's see if there is more discussion about that.

So any more discussion about that in Sacramento?

Sacramento public?

MR. SPECTOR:

I have a question.

ADMINISTRATIVE LAW JUDGE GIBSON:

You want to talk?

MR. SPECTOR:

Yeah.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Come on up.

MR. SPECTOR:

I'm Joe Spector. I'm a parent psychologist working with parents and students.

I probably don't have the big picture, and I'd like a work group or something like that to discuss it. But I'm wondering to what extent unrepresented parents are more likely to use a formal mediation rather than a prehearing and how that all interacts with the scheduling issue.

ADMINISTRATIVE LAW JUDGE GIBSON:

You say informal mediation. Does that mean not with OAH?

MR. SPECTOR:

Outside of the filing, the due process.

UNIDENTIFIED FEMALE SPEAKER:

He means mediation only.

MR. SPECTOR:

Mediation only. I call it a following mediation. But there's got to be some dynamic between what we'll call mediation only and then when unrepresented parent files. I'm not asking it clearly but --

ADMINISTRATIVE LAW JUDGE GIBSON:

That's okay. I think you'll find that data on our website in the quarterly reports because it shows how many mediation-only's were filed, how many due process with mediation, how many were held, whether people were represented.

MR. SPECTOR:

I feel like generally that may impact the scheduling.

ADMINISTRATIVE LAW JUDGE GIBSON:

It may. Thank you.

Any other public comments?

MR. CALDERON:

Yes. I just wanted to -- Alfonso Calderon again. Parent/Student advocate.

I just wanted to mention that from my experience in the last two, three years, the mediations were automatically scheduled. I'm noticing now recently that they're not scheduled. And then there has to be a conversation between -- since I'm an advocate of nonrepresented parents and the district, which seems to be okay because I think that the district and the parents, when they have advocates, get a good grip of whether we need to have that.

That's why I think it's okay for it not to be, but it was before. I noticed it was automatic.

ADMINISTRATIVE LAW JUDGE GIBSON:

Until November. And we changed in November 2017. What you felt happened, happened.

Any comments from Oakland on the current recommendation at issue?

MS. HALEY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON :

Any comment from Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any comment from the public in Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

MS. HALEY:

What was that, Marian?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any comment from San Diego?

MS. DALTON:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any comment from the public in San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. We'll take a vote. We'll start with Oakland.

MS. HOOKS:

Rochelle Hooks. Yes.

MS. DOBEL:

Kathryn Dobel. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sacramento?

MS. CORR:

Lisa Corr. Yes.

MS. SAVAGE:

Roberta Savage. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. OAH will take that recommendation under submission, and I will respond.

All right. Next is update of the -- impact of California Attorney General's determination regarding representation in Special Education due process matters.

So you've got a couple pages here of some data regarding representation. And let me be clear that I don't have the data that you're really looking for.

The use of attorneys has gone up, but it's gone up year to year prior anyway. So I don't know whether that that is a trend that is just continuing or whether or not that there was some reason something changed.

When advocates represented students prior to this, we didn't count them in these numbers anyway. So the pre-represented by attorneys were only attorneys.

Now, if students are using an advocate to advise and assist them, we don't -- the parent has to still sign the documents. They're showing up the PHC. We have some idea it's going on usually, but we don't have a full idea, and we don't track that.

So I have no way to tell you whether or not the number of people using advocates to assist them is the

same as it was before the letter and the same as it was after the letter.

I will tell that you we still kind of see a lot of the same people around. Parents sometimes tell us they're being assisted by people. But I have no way to know those answers.

So the update is, is currently, we are -- continue to see an increase in cases every year. We have seen an increase in the number of attorneys by representation by at least one party.

This did affect both school districts and parents. There were some school districts that used nonattorney representatives as well, so there was an impact on both sides.

And that's all I have on this. I wish I had better data, but there's no way to collect it. You've got what I've got.

So I'll open it up for conversation. I'll start
in Van Nuys.

Anything in Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

Nothing in Van Nuys.

ADMINISTRATIVE LAW JUDGE GIBSON:

I'm going to do the members first, and then I'll do the public. So I'll go to San Diego.

Anything in San Diego?

MS. DALTON:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything in Oakland?

MS. HALEY:

No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Anything in Sacramento?

MS. SAVAGE:

Of course I have a comment. This is Roberta Savage again. Okay.

So I guess some of my questions/comments about this are -- and I've been trying to connect with advocates to understand -- advocates that have used the process and would file and participate in mediation, and now they don't and what they go through; advocates who might still show up at a mediation and how that looks. And so I guess I have a couple of questions for OAH.

When -- like, it's -- I am aware of people who now refuse to file because they're worried about this, that if an advocate -- as an advocate, they used to file regularly, go to mediation, resolve cases, or move them off to an attorney. But they won't do that any longer, so there's -- because of this regulation and how it's been implemented.

So there are families who are just delayed getting representation because then those advocates have to, before the filing, push them off to an attorney, which delays the process. So I don't have if you guys have information on how many more cases are being filed or if there are still any cases being filed by some of the criteria of an advocate or a consultant. That's one question.

The other is what -- is there kind of a policy for how across the board OAH if an advocate or an educational consultant shows up with, let's say, an unrepresented parent at a mediation, how they -- how the judge conducts themselves with that.

Because the feedback I got was it was pretty varied. And it varied based upon -- and for a lack of anything more systemic -- what respect the judge had for that person. And that was kind of -- so it didn't matter, really, their title. It was a level of respect by the judge.

So those -- another question, like, do you have a policy?

The third thing that I think has been

troubling -- and I don't know how OAH deals with this -- is not just the effect that this has had on your process here but how some school districts have taken it and

have started to challenge advocates and consultants at an IEP level, saying, "You don't get to practice. You are engaging in the unauthorized practice of the law."

And I think those are the three things -- I get that the third one is not something that OAH has the authority to deal with. But it's the impact of this, and then those disputes bubble up to you.

So those are just my comments/questions that I had about this process.

ADMINISTRATIVE LAW JUDGE GIBSON:

So see if I can hit all three.

So first of all, not OAH's -- it's the Attorney General determination. It's not OAH's determination.

Second thing is there is nothing stopping -- and we have this all the time. We can tell -- like, you know, advocates who used to file with us used to sign the bottom. Our requirement is that it's signed by the parent now. Doesn't mean the advocate -- well, what the parent considers assisting and helping, it can be written completely by the advocate. We don't get involved in that; right?

But the parent is self-represented. Our position is the parent is the person who signs the --

MS. HALEY:

Sorry. There's a -- the paper rustling makes it kind of hard to hear for the court reporter.

ADMINISTRATIVE LAW JUDGE GIBSON:

Who's rustling? Oh. I don't know. Okay.

MS. HALEY:

Thank you. I think that will help.

ADMINISTRATIVE LAW JUDGE GIBSON:

So as far as OAH's concern, their -- we encourage parents who want to engage with an advocate to do that. That's in the law. We are in no way disregarding that.

Parents are, however, self-represented when they use an advocate, not an attorney. And representation is a term of art for this. So the parents have to sign the document.

The process of getting to the document that the parent signs is between the parent and their advocate. It's not up to us.

Parent, however, also has to appear at the prehearing conference. Nothing is stopping them from having the advocate sitting next to them. But the parent is speaking. The parent is self-represented. Parent is appearing at hearing. Parent appears at mediation.

The advocate may assist them. And the advocate may give them advice, which means that the advocate can sit there. And the advocate can sit with them. I informally like to call this the grandmother rule.

So if a parent brought their mother to the mediation, the mother may have some comments. The -- but the parent is speaking for themselves. So the mediator wouldn't be leaving the room with an offer if the only person who talked about the offer is the advocate; right?

But does that mean that the advocate can talk about it and the mediator, in some cases, might check with the parent and double-check it's what they want? Or in some cases, the parent talks?

I mean, we leave that to the mediators. People's individual personality, how it's going, or whatever.

But the -- unlike where an attorney is doing a mediation where the attorney may do all of the talking, the parent is still self-represented.

So I'm hopeful that the help that parents were receiving, which can be very valuable from advocates, continues. What they're not doing anymore is signing things and speaking in place of. That should be the real change in this. So that's -- I think I've answered your questions.

MS. SAVAGE:

Yes. Because the third one you can't because it's how districts have then interpreted this and deal with people.

Another question I realized. What was, like, the impetus for asking the AG about -
-

ADMINISTRATIVE LAW JUDGE GIBSON:

I don't know. I didn't work here. They asked him a really, really, really long time ago.

MR. CALDERON:

It was 2014.

ADMINISTRATIVE LAW JUDGE GIBSON:

It was a really -- yeah. It was -- I was not involved when that happened. And OAH asked as an OAH, not just special ed. So it had to do with general jurisdiction. It had to do with a lot of things. And so that's why the opinion came back with two different kind of answers to it. And that was that.

Any other comments from the committee members in Sacramento?

MS. SAVAGE:

So I want to be -- I just to want to clarify. So, for example, in a mediation and whether it's a mediation followed by a hearing request or a mediation only -- and I don't know if there's a difference -- is it -- OAH would permit an advocate or consultant to be there with the parent and then just not be able to kind of speak on their behalf but be there as a -- guiding them or assisting them. Is that --

ADMINISTRATIVE LAW JUDGE GIBSON:

So for a mediation with a due process hearing, yes.

MS. SAVAGE:

Okay.

ADMINISTRATIVE LAW JUDGE GIBSON:

Mediation only, I just had a huge, giant brain freeze because there's a prohibition on attorneys at mediation only. For the life of me, I can't remember the other piece. I feel like you can bring your mother with you to a -- yeah. The grandmother rule applies. I don't want to say something that's incorrect because I'm not staring at it right now.

MS. SAVAGE:

Sure. No, that's fine.

THE COURT:

So I'll answer your question as far as mediations -- the confines of due process. If you can bring your mom, you can bring your advocate; right?

The bottom line is who speaks for the party in the negotiations. And there is nothing stopping the person from consulting with their advocate during the mediation.

The mediator may decide they really only want to hear from the self-represented litigant. That doesn't mean that they can't consult back and forth. I'm going to leave that

to the separate -- mediations are different. Advocates are different. Parents are different. I leave it to the mediators to determine what works the best.

But in general, we don't have the situation anymore where the mediator says, you know, it's -- "We're looking for X, Y, Z. Go to the other side and get it." And then the person comes in and speaks to the mediator. We're speaking to the parents. We're getting that information.

And actually, from unrepresented parties, because it also is school districts. School districts also this had affected, and we are speaking to the school district representatives. It's different.

MS. SAVAGE:

Okay. I don't have any other comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any comments from Oakland?

MS. HALEY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

MS. DALTON:

Yes. This is Margaret Dalton. So my recollection -- and this goes back quite a ways -- is for mediation only -- and I say my recollection of when it became an issue. It was probably a number of years ago. And because the statute does, in fact, say -- I want to say it doesn't use the word "attorney" or it may say something like "attorney and other legal representation" in terms of not being allowed at mediation only, parents reported to us -- in the clinics anyway -- that they couldn't bring an advocate.

So I think that might have been on a case-by-case basis. But I think there was some feeling that advocates could not go to even mediation only.

I'm not saying I think that's good or bad. I'm just saying that that was the case. That may have changed.

ADMINISTRATIVE LAW JUDGE GIBSON:

And I've got to read it. I'm so sorry. I just -- I wasn't prepared to answer that question today.

So I will go back and read it for me. And if you make a recommendation that I answer that question for you,

feel free.

MS. DALTON:

I don't think I can make a recommendation, you said.

ADMINISTRATIVE LAW JUDGE GIBSON:

No, but maybe one of your colleagues.

MS. HALEY:

We have comment in Oakland.

ADMINISTRATIVE LAW JUDGE GIBSON:

Yes.

MS. DOBEL:

Kathryn Dobel. I do have a comment on that. There is at least one school district in Northern California that uses its internal legal office to file for mediation only. And I have participated when that happens, and OAH has been fine with that. So I don't think there's any particular prohibition.

ADMINISTRATIVE LAW JUDGE GIBSON:

Well, and I will say that generally, if both parties agree on a mediation only to bring legal counsel, we're not dying on that hill.

UNIDENTIFIED FEMALE SPEAKER:

Oh, sorry. Didn't know that.

ADMINISTRATIVE LAW JUDGE GIBSON:

But people need to specifically double check. We've got to make sure it's really okay with people. It's not something we're jumping up and down about, but if parties can resolve something. But we're never in a position where we're talking about that. We're just kind of notifying that both parties agree.

But I think – I just don't want to say anything wrong on the advocate piece because, like I said, I don't remember the exact wording of the statute. My brain is frozen right now on this.

Any more comments?

All right. I'm going to take some public comment now, and then we'll look for some recommendations afterwards.

Public comments, Sacramento?

MR. CALDERON:

Yes. Again, Alfonso Calderon. I have several. And I'm going to make my comments in accordance with my experience.

So -- and you're right. You're correct. Before the opinion, we were able to assist even at the hearing and speak. And I don't have a problem with how the opinion and it has all developed.

I've done three mediations with two judges. One of the judge was mediator in two of the cases. And they were fine, and they were some of your mediators that were just fine speaking with me and allowing me to speak, particularly because the nonrepresented parents are Spanish-speakers only.

And when there's an interpreter and it just becomes -- the dynamics are great. So they've allowed me -- they've actually asked me, "Mr. Calderon, what do you think?" And the parent -- as advocates, we know not only the student, what the student's going through, the case, everything because we've looked at the documents. So I don't think that the idea was to limit advocates.

But my second part, the comment is that some law firms have taken it to the point of threatening over the phone, threatening in writing and even to OAH where OAH has to decide no, it's fine, you know.

So I think that if OAH maybe attempts to take a look at -- and I think you were in the process of looking at the decision and how the implications were, but I'm going to suggest that it become an agenda item to where we take a look at -- or OAH takes a look at because Office of Administrative Hearings also does hearings for other -- I think there's seven in DGS?

ADMINISTRATIVE LAW JUDGE GIBSON:

We do hearings for 1800 agencies.

MR. CALDERON:

Okay.

ADMINISTRATIVE LAW JUDGE GIBSON:

I think.

MR. CALDERON:

Okay. But the ones that I looked at here in California, they still allow advocates. Oh, I didn't want to get the substantive issues because we've had that before. I just want to talk about the procedural, which is how can we get to the point where we can possibly make it similar for everyone.

So that's my second part, which is, you know, probably way out there because I understand the nature of it. But in general, I think one of your orders or one of your judges added to it, and I appreciated it because they added "lay advocate." And that, for me, was a world of change.

Because we're not just advocates, we're lay advocates. So when an attorney gets the information and I get the call or an E-mail and they're very hostile about "You're an advocate. You can't" -- you know, the whole thing misinterpreted the decision because in your conclusion of the decision didn't say the portion about parents still have the right to have anybody, like you said, even if it's a grandma, neighbor or whatever.

So lay advocate for me works because we are lay advocates. And we don't pretend to -- and then the other portion that I think one of your judges put is that we don't practice law. That's a whole big realm of, you know -- I don't want to get into the details, but we don't do that. We just simply advocate for parents. And if we look at the

definition of advocate, it says speak for parents. But I think, you know, there's a lot more to that than just that.

So from our advocacy perspective, we're very active, and we haven't seen a downfall. We've actually seen an increase in activity. I think mostly it's because they're beginning to know from other people, word of mouth. ey, you actually can do something about trying to get more sources for your child. So that's my piece.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you.

Any other comments from Northern California?

MR. SPECTOR:

Joe Spector. I'm really concerned about with regard to he bought up the threats across the table by a district saying you're practicing illegally. This is a legal violation.

And I'm not sure if that really falls within the scope of OAH or is that more of a Department of Education complaint about parent participation? It's -- an advisory is needed. Is that -- while I've always appreciated working with lawyers whenever possible, it's quite perplexing what you're talking about and kind of unacceptable. But I don't know whose scope that would be.

ADMINISTRATIVE LAW JUDGE GIBSON:

We don't issue advisory opinions. So unless it comes in front of me, I can't tell you how we rule.

MR. SPECTOR:

Right. So -- okay.

MR. CALDERON:

I think I know what you're saying --

ADMINISTRATIVE LAW JUDGE GIBSON:

Hang on. You've got to come up to the thing and...

MR. CALDERON:

I think I understand what you're saying because I've seen that -- the unauthorized practice of law. They'll draft that as part of opinion and then, you know, they're now talking a whole different story and -- they wouldn't really appreciate that.

MR. SPECTOR:

But I'm not understanding about this topic is a complaint to the Department of Education versus OAH.

MR. CALDERON:

Right. Understand.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you very much.

MR. SPECTOR:

I understand what you're saying, not advisory opinions.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you.

Anything else?

All right. Any public comments from Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No public comments.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any public comments from San Diego?

ADMINISTRATIVE LAW JUDGE CASTILLO:

None.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any recommendations from the Northern California Advisory Committee members? Oakland?

MS. HALEY:

None.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sacramento?

MS. SAVAGE:

I have one. That OAH will determine if the mediation-only regs authorize participation of an advocate or an educational consultant to assist other party in the process.

MS. CORR:

Second. Lisa Corr.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Let's take a vote.

Oakland?

MS. HOOKS:

Rochelle Hooks. Yes.

MS. DOBEL:

Kathryn Dobel. Yes.

MS. CORR:

Lisa Corr. Yes.

MS. SAVAGE:

Roberta Savage. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. OAH will do that. And I apologize I didn't know it off the top of my head.

All right. Now comes what I think is the most -- well, everything is interesting. So I just think this is an interesting problem we're having.

So I'm on Number 17, "Inclusion of tort claims as part of mediation discussions and resolutions - process, limits, and remedies."

So this is real tricky. Before OAH begins to struggle with this, and I wanted you guys to start to struggle with it. And I don't think we're going to come to an answer today. But I'm really looking to the Advisory Committee to help with this.

OAH is required to offer mediations to parties in response to complaints filed under the IDEA and Cal Ed Code, the special and provisions.

Increasingly, when an OAH mediator arrives at a mediation, there are other claims outside the jurisdiction of OAH that either one or both parties expect to be settled at the mediation along with the claims over which OAH has jurisdiction.

I understand why sometimes that's the case. So, for example, one side might want a waiver of all claims. And if the student side is going to waive that and they have some other claims, maybe we're talking about it.

There might be an issue regarding a different kind of replacement, like the regional center. There might be 504 issues. There might be a larger tort claim or an ADA claim that's lurking in the background, and the people want to do it.

Lately, we've had some pretty serious issues arise with this, though. I sent a mediator on a three-day trip; right? So it took six hours to get there, one day. They got to mediation. And the next day, they drove back. They got to the mediation, and there were no special ed remedies on the table from the people who filed. They just wanted damages for an adjacent tort claim.

And so there was no special ed -- nothing that a special ed judge would have jurisdiction over.

I absolutely understand that in settlement, you can get a wider variety of outcomes than you can from a judge. I am in no way trying to put any damper on the wide variety of things people can bargain for.

But CDE is paying for the mediators to show up. It is not inexpensive to the taxpayer of California.

I am concerned that our judges are going somewhere and basically, occasionally, end up with an expectation that they are now going to settle complex legal cases with insurance counsel at mediations. And that is not our purview, nor should CDE be paying for an extra free mediation.

There is an answer somewhere, and I don't know what it is.

CDE pays OAH to mediate the claims that come in front of OAH. So I'm looking for the Advisory Committee to start thinking about -- and I don't know if make recommendations today or in a future meeting -- but I want OAH to get a better idea of how to handle things.

Do we require parties to notice OAH that other claims might be part of a mediation? Will OAH continue to assist in the settlement if the claims are minor and part of, like, a common nucleus of facts?

What if OAH shows up and mediates whatever the parties want to settle in order to make the OAH claim go away? I mean, that's far extreme end, right, is we show up, and we deal with a tort claim all day and insurance counsel.

OAH mediates it if the other claims are limited to a certain percentage of the overall issue. Ten percent, 50, 75. I don't know.

Do both parties need to agree prior to the mediation that other claims are on the table?

Would OAH and CDE need to agree to this? After all, CDE is paying for it.

Would the parties pay a proportional amount for the cost of the mediation for claims that are outside the OAH jurisdiction?

Who would decide, and how would it work?

I have no answers.

But I can tell you I'm increasingly bothered by not having an answer to this question.

Having practiced, I absolutely understand the need to settle, if possible, all claims between the parties. And OAH mediation comes quicker and easier.

I get the incentive to do it. I don't necessarily understand all of the complications from it, nor do I expect me to go around the room right now and you all to give me a pat answer. It's a very complicated problem. I don't know the answer to it. It's becoming an increasingly large problem.

I don't know how to look at CDE -- I mean, I know how to because we didn't know it was going to happen. But I've got a judge who spent close to 24 hours on a case that had nothing to do with OAH.

And it was almost as if -- I mean, there wasn't one claim for reimbursement. There wasn't one claim for placement. It was like this adjacent claim that got subsumed in this tort claim. Because the tort claim, of course, had a much bigger dollar amount than the special ed claim. So I have a feeling the idea was, well, if we settle this tort claim, we'll let what we consider the minor amount of the OAH claim to go away.

But the reality was is our judge isn't trained or prepared to do complex tort litigation mediation, nor should they be.

So I also don't know -- I don't suspect it was a surprise to the school district's side because their insurance lawyer was there. So we were the only ones surprised when we got there.

And so this is a concern. I don't know the answer. I'd like to talk about it a little today, but probably we're going to want to talk about this again.

I didn't want OAH to get down the road of talking amongst ourselves to figure out this problem before bringing you all in because it's a complex problem that's going to have some real world ramifications to whatever we decide.

And at some point, we're going to bring CDE in because they're the ones writing the check, and they're really going to need to weigh in on any decision we all come to at some point.

Part of the other problem I have is let's say it's a 504 claim or an ADA claim that has been pled, and we've dismissed for lack of jurisdiction. What's the legal -- I then -- now our mediators are talking about it in the context of a mediation, and it's a dismissed claim. CDE, again, paying for it. These are just things that keep me up at night.

So I'll open it to discussion. And maybe this is another one of those, hey, it would be swell to have a stakeholder meeting and talk about this with a much -- in a much bigger perspective.

So that's what keeps me up at night.

So, San Diego, you have anything you want to talk about now?

MS. DALTON:

Not at this time.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Van Nuys?

MS. BLIZIOTIS:

Yes. Sophia Bliziotis. There's been a huge uptick in the expansion of claims related to -- as you've reminded us -- the common nucleus of facts. And we have to get OAH usually through a hearing, though, to dismiss for lack of jurisdiction to take it to where it's appropriate venue, which is a clunky process.

I do think that it's incredibly complex, and I do think that -- the zeitgeist is this expansion of claims.

And I do think it needs a stakeholder meeting. I absolutely think it does, because it's happening a lot.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. DOBEL:

Kathryn Dobel. I have a few thoughts about it.

The first is that we -- I agree with the stakeholder meeting because I think this is a complex issue. And one of the first things that comes to mind is we have one of the only states where you cannot adjudicate 504 in an IDEA case with the same hearing office.

I've litigated in other states where I can raise claims with IDEA claims, and it makes absolute sense because often, they're very, very similar. So that would alleviate our problem of having to double litigate cases on some level. Obviously, it's -- we're not talking about tort claims for injuries or other personal injuries.

But -- and also, sometimes there are cases where you have a case on appeal, and then you have to file again because now you have another two-year statute. And I have seen your office be actually very help -- more helpful than the federal court in resolving both cases at the same time.

Sometimes in federal court, you're lucky if you can see the magistrate for more than an hour at a time, strung out and, you know, many months. And then you have -- here we are, we have the date coming up for mediation in the second case filed. And that makes sense for all parties. But it does take longer.

And so similar, the tort thing would seem -- I mean, I don't do court work, but I usually just make sure there's no waiver of it. Somebody is handling that part of a case usually.

But it would seem that all of that could be worked out so that we're all aware of what the process was and what was going to be permitted if we met and really fleshed it out.

ADMINISTRATIVE LAW JUDGE GIBSON:

And that's the part for me. Like, I just -- I think what we're doing now isn't working particularly well for everybody, including CDE. I don't want to speak for them, and I just -- there's something -- it's expanded to a point where it's a problem. So I agree with that.

As to the handling the 504 claims, while I like to think I have a lot of control in my current position, that's clearly legislative; right? And there are things that are out of our control that I -- like, I can't decide to do 504 claims. I only have a contract to do the due process claims.

So let's -- and I want to be clear. My position isn't "This is a terrible thing." My position is the three-day only tort was a terrible -- not a terrible, terrible. But was probably not what we're intended for.

And so that, to me, is the far edge. I don't know what the other edge is except it's not zero. And figuring out where that is and what notice people need to have and what we're okay with and what we're not, our mediators want to solve problems for people. I think the example Kathryn gave was great.

If there is an appeal in another case, I think our mediators are pretty game to settle all the disputes between the parties when they're sitting there. And that might be an easier -- so -- an easier one because that one's going to end up back around at us anyway maybe, right, if there's a remand or something. I mean, I think I could make a -- I think I can make an easier case for that's some of our business than some of other things, but I don't know.

So that's my response.

Do you have anything else in Oakland?

MS. HOOKS:

No.

MS. HALEY:

That's it.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sacramento?

MS. SAVAGE:

This is Roberta. I think the other thing that comes into play is the releases sought in these agreements. And, you know, people struggle over time with what that looks like. And so OAH and C-HO (phonetic) before that long had mediators in there, and the release of claims was for everything, including the tort claim. So I totally agree with Sophia. There's this uptick in these claims.

But arguably, these claims have been being dealt with for years just in a different way because, oh, if you want your case done, if you want this, you have to release all claims.

So I do think it's complicated because maybe if there's going to be some decision taken about this, those agreements that are entered into are going to have to not -- either not include those claims or to include those claims, which may make lots of people uncomfortable.

So I think -- I agree with the recommendation for the stakeholder meeting, but I think the problem has been there longer. We just didn't realize you don't have these more obvious examples because we didn't have it before.

And I also think the other function of this is people are looking at how do you -- how do you define your claims. And as OAH has been more -- I'm going to use the wrong word, but it's Friday. So I apologize -- has been more rigid in what we --

ADMINISTRATIVE LAW JUDGE GIBSON:

Stringent.

MS. SAVAGE:

Right. Okay. Rigid, stringent. Whatever. You know.

Has been more rigid in how we define our claims and how they identify, like, this is part of that claim. I think students and district attorneys are looking at, well, what are those other claims. And then how are they related. And so I think it's a confluence of multiple things that get to 18 hours spent on a tort-only claim.

So I think it's a lot to have people be talking about. I don't know that -- who knows what the answer is.

MS. CORR:

So hopefully, I don't raise more angles for you to look at. I suppose I agree with the stakeholder meeting as well. I certainly wouldn't object to that. But maybe I can bring a few things up from my perspective.

You know, working -- I represent charter schools. For those of you that don't know, they're all much smaller. So it's similar to representing small school districts. And from our perspective, we would -- we want to know all the claims that a parent has because we do want a larger release, if possible.

And so if an opposing counsel says, "I'm not comfortable with this release," my answer is going to be, "What other claims do you have or are you aware of? Because I don't want to be back at any table with you. We want to get this done because we don't

have the money to -- you know, my client doesn't have the money to do this over and over again."

I also think that that is -- that might be why -- so if I see a claim come -- a complaint come in and there are three IDEA issues and then one issue that's arguably not, I usually will let it sit there until after mediation. Because if we can resolve it, great. And then if it's not resolved, I would go in and make a motion to dismiss that issue.

Then another point I wanted to bring up is I think that there's a distinction to be made between, like, educational tort claims versus not educational tort claims. Like, a personal injury versus, you know, a 1983 claim. You know, so, I mean, most of the waiver language that I see is a release of all educational claims, which would include claims under 1983 and 504 releasing educational but not personal injury-type claims.

And so, you know, I have not seen a complaint that had a personal injury-type complaint in it. And I would think that my gut would be at that point to make a motion to dismiss that even before mediation. And maybe -- is OAH allowed to on its own motion to -- to --

ADMINISTRATIVE LAW JUDGE GIBSON:

Yes.

MS. CORR:

-- dismiss or limit claims on its own motion?

ADMINISTRATIVE LAW JUDGE GIBSON:

Yeah. We can raise jurisdiction at any point. But the case I'm telling you about, we didn't know the other claim existed until we get to the mediation.

MS. CORR:

So it wasn't even --

ADMINISTRATIVE LAW JUDGE GIBSON:

It was a totally separate --

MS. CORR:

It wasn't written in the --

ADMINISTRATIVE LAW JUDGE GIBSON:

No. Totally separate claim. So that's why -- that was the extra element of surprise; right?

So technically, we can raise jurisdiction every time -- at any time. Depends on when a judge is looking at it. So just -- a judge may not look at that complaint until the prepping for the prehearing conference. The mediator might look at it, but they've got no authority -- they can't dismiss it for jurisdiction. And they would never raise that, right, because they're looking at it in mediation prep.

All right. Is there a comment out of Van Nuys?

MS. BLIZIOTIS:

Yes. Sophia Bliziotis. I mean, I believe there was oral argument yesterday on the issue that is associated with this in the 9th Circuit. So the timing of the stakeholder meeting may need to be tied to that outcome.

ADMINISTRATIVE LAW JUDGE GIBSON:

I'm sorry. Sophia, let me ask you a question. I know nothing about it. This is not a coincidence -- I mean, this is a coincidence.

Is that issue as to whether or not non-IDEA claims need to be raised for exhaustion purposes in IDEA?

MS. BLIZIOTIS:

No. No, your Honor. But it is related in terms of how broad the releases can be and whether or not there needs to be a minor's compromise, et cetera. And so it is related to this issue.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sure.

MS. BLIZIOTIS:

Because it really -- underlying this issue is a dispute really between parents' side and district side about how broad or narrow the releases need to be and whether or not it's legitimate -- or valid, rather, is a better word -- to have the very broad language that we see in the releases.

So -- and I have no solutions to offer, and I apologize. But I am very interested in this issue in its entirety.

ADMINISTRATIVE LAW JUDGE GIBSON:

Great. Glad I can bring up stuff that at least is relevant.

MS. SAVAGE:

I'm just trying to look at the case. I'm not being --

ADMINISTRATIVE LAW JUDGE GIBSON:

That's fine.

Anything else from San Diego?

MR. SCHWARTZ:

I would like to say something.

ADMINISTRATIVE LAW JUDGE CASTILLO:

Yes. Why don't you come closer.

MR. SCHWARTZ:

Hi, everyone. Seth Schwartz from the Law Offices of Schwartz and Storey. I know a couple of you guys.

I would like to see data on this issue if the mediators can collect when things are coming from outside of the case versus being brought up as a result of waivers.

It's hard to imagine that attorneys in our field are bringing in tort claims on their OAH cases, although I'm sure it happens. I would love to see what that looks like in terms of numbers. Thank you.

MS. CORR:

Yeah. I mean, I can literally only think of one case where we tried to double down and get, like, a personal injury settled at the same time.

ADMINISTRATIVE LAW JUDGE GIBSON:

So I think there's three ways this happens, and I could be wrong. There might be more than three.

One is there's an OAH case that has -- that's filed with an issue that's quasi jurisdictional, right, where it's a little iffy. Number 2 -- so that at least it's part of it.

Number 2 is there's a secondary case that's filed or about to be filed in federal or state court. And Number 3 is -- and so we're blindsided.

And Number 3 is it comes up with a waiver; right? So Number 3 is we go -- everybody thinks they're settling Case A. And we get to the waivers, and all of a sudden, either the district's attorney has said, look, we want a waiver of everything. Or the parent's attorney is like, well, I might have other claims, so I'm not willing to do it. Somehow now a conversation is started, and both sides are like, holy crap. What else is going on? And then we need to expand a little.

I am less concerned -- although open to having a conversation -- about Number 3. Because at that point, there's kind of a bargained-for, you know, piece of that.

I'm more concerned about Issue 2, where there is a side either contemplated or filed actual other case, you know, possibly ready to go. We've had people slam down a tort claim in the middle of mediation on another side. But -- so all of a sudden, that just becomes the whole thing.

Again, I'm less concerned about the bargain-for-waiver piece of it because I think no matter what, that's a valuable -- there's consideration on both sides. And we can debate whether or not it should happen or not. But at least at that point, from my perspective, the fact it's coming up at mediation has a logical nexus to what we're doing.

It's when there is no nexus and we spend the whole day on another claim with insurance counsel that the back of my head goes up. Does that make sense?

UNIDENTIFIED FEMALE SPEAKER:

Yeah.

ADMINISTRATIVE LAW JUDGE GIBSON:

I am open to solving the whole problem. I am not saying I want to limit it, but I came from -- my problem today is the middle piece.

All right. More comments -- any other public comments in San Diego? I didn't mean to cut you off if I did.

MR. SCHWARTZ:

No.

ADMINISTRATIVE LAW JUDGE CASTILLO:

No further public comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Okay. Anything in Van Nuys? I see a notepad.

ADMINISTRATIVE LAW JUDGE TULLY:

We're fine. No comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. DOBEL:

Kathryn Dobel. I just have one other thought about this. And that is mostly for either lay parents and lay advocates that sometimes the compensatory education issues look like tort claims when you say, "I haven't had any education. I need a pot of money to buy services."

So it happens more obviously for parents who can't afford to purchase services and then seek reimbursement. But that -- I just would hope that that wouldn't be mixed up in this discussion if there is a stakeholder's meeting.

ADMINISTRATIVE LAW JUDGE GIBSON:

In my head, that was never mixed up. So here -- like, an example would be like there's a FAPE claim that -- I'm just trying to think of something.

So part of the FAPE claim was Billy was bullied, right, and it's a denial of FAPE claim. And so as the special ed remedy for that in the complaint or at mediation, they want -- I don't know -- two years of compensatory education, some extra therapy -- I don't know. Trying to think of special ed pieces.

Then "We'd also like a million dollars for intentional infliction of emotional distress." It's that second part, not the first part. Or for the first part, "We want a pot of money. We'll do a buyout." You know, student will -- parent will provide student with the education. None of that is -- to me, that's a special ed remedy.

We're talking about the sheer tort part of it that generally is exponentially different from the special ed part of it and requires a level of expertise and understanding and could never come in front of us.

So my judges who are the mediators also are -- it's just weird.

MS. CORR:

Yeah. They don't have the training to know the right remedy. I mean, they might be able to get the parties to -- but it's...

MS. SAVAGE:

I had a thought, and it's left. It's back. So kind of in line with what Seth was asking down in San Diego, are -- is OAH seeing that in these cases -- the one where there's this tort that's trying to get mediated, is that preventing the case from settling so that you guys, in addition to that 18 hours or whatever of your judge spending time, there's also the -- this has been the block for settlement? And now you're going to hearing. And then you've got seven days of a hearing, and you're having to manage what tort information comes in or doesn't come in.

ADMINISTRATIVE LAW JUDGE GIBSON:

Yes. But here's the other thing.

MS. SAVAGE:

Just – sorry. Is it just the fact that it seems like it's out of the -- there's parts that could be outside of any scope.

ADMINISTRATIVE LAW JUDGE GIBSON:

I think it's a couple things. I think -- and look. On one hand, this may be considered brilliant lawyering. So I am in no way -- anyone recognizes themselves -- part of the IDEA stuff is that you get to a judge faster.

And if you're an attorney and if there's an attorney on the other side, I don't think it's a secret that sometimes the attorneys' fees are more than sometimes the remedy, not always. And sometimes districts might want to avoid the cost of a hearing and may be more likely to settle an outstanding tort claim with the specter of a due process hearing coming over your head.

So are there possibly very fine lawyers who have come up with a plan that makes the most sense for their client? Absolutely. Am I here to pass judgement on either side of that? No. There may be good reasons to do that and good reasons not to do it.

My problem is my people are all of a sudden standing in the middle of that at a mediation. And people don't settle a case, and we go to hearing. And there's an outside reason because they didn't settle the tort claim, I don't care if we have that hearing. No skin off my back; right?

Where it's a problem is the mediation where we're now brought into that settlement.

Here's the other catch. And this is, I guess, a little too OAH. But what if the statistics of whether that mediation was successful when the parties all agree that the

special ed is settleable; right? And now it's not settled because of this outside issue. But nobody's going to admit that the special ed part is settleable because you've got now a huge waiver and all these other problems, and you want to have the hammer; right?

So parties with tort claims on both sides are incentivized to play this out as good legal advocates for their clients. I just don't like that sometimes in a mediation, I'm plopped in the middle of there, and I'm not sure it's the right place for me to be. That's my ten cents on it.

All right. Any recommendations or other comments? Anything from the -- oh, hang on. We have a public comment in Sacramento.

MR. CALDERON:

Okay. Well, as you mentioned and everyone I think is agreeing, it's complex. But because it's complex, that's why it's a good idea to bring it to the stakeholders. And it becomes complex in several ways. So I'm not going to get into the whole thing, but your comment by CDE paying for it, let me start there.

CDE also provides state funding so that schools implement special education. The reason we -- for parents decide to bring a due process hearing is because they're not receiving that, according to them. So that piece about them paying for it, I get it.

Now, I think the most worrying piece on your end as well as our end is that a mediator is there and all of a sudden is hit with this. Now you've got to mediate a tort claim.

ADMINISTRATIVE LAW JUDGE GIBSON:

Yeah. Well, and I think -- yes. But I also think that CDE pays us with special funds that are made to get rid of IDEA and Education Code claims. So at what point are they paying us almost exclusively for a non-special ed claim.

MR. CALDERON:

Right. Exactly. That's well taken.

So I think it stems from the lawyering part -- and I'm not blaming everything on lawyers because there has to be lawyers and there has to be advocates and has to be parents and has to be OAH.

When the waiver -- and that's what contemplates advocates to say, wait. Hold on. You're going to actually give your rights away. So -- and then the lawyering says to the advocate or the parents, "You can't deal with your tort in here."

And then they bring it to the hearing or the mediation, and all of a sudden, we've got this big mess.

So I think there are solutions. And there's -- it has to be thought out. It has to be discussed. It has to be deciphered and so that everyone comes out, you know, ahead.

So it's complex. I'd like to be part of it because some of the things you were mentioning, you said, sound really close to what some of our parents are going through.

And, again, to bring -- I do agree that to bring OAH into just a tort claim is not appropriate. I mean, placement, we're talking about services and things, you know.

So I think that there has to be a larger discussion, and I would suggest that you invite us to a stakeholder meeting. We would absolutely show up because it's major. Because we're dealing with all these matters. And then all of a sudden, we want the IDEA special education services issues dealt with, but then this thing is lingering that the parents are going to have to deal with. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you.

Anybody else? Sacramento?

Anybody else have any comments?

Any recommendations? Northern California?

MS. SAVAGE:

I do. This is Roberta Savage. That OAH hold a stakeholder's meeting to discuss the issue of the scope of claims being part of OAH's special education mediation process. I think that's what we were talking about.

ADMINISTRATIVE LAW JUDGE GIBSON:

Any seconds in Northern California?

MS. DOBEL:

I'll second it. Kathryn Dobel.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Any more comment before we vote?

Sacramento?

Oakland?

Van Nuys?

ADMINISTRATIVE LAW JUDGE TULLY:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

San Diego?

MS. DALTON:

No.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. Let's do a vote. Let's start in Sacramento.

Lisa?

MS. CORR:

Lisa Corr. Yes.

MS. SAVAGE:

Roberta Savage. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Oakland?

MS. HOOKS:

Rochelle Hooks. Yes.

MS. DOBEL:

Kathryn Dobel. Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

All right. It passes unanimously. I will take that -- undertake that recommendation and respond.

All right. That is the end of our agenda items.

ADMINISTRATIVE LAW JUDGE CASTILLO:

Ms. Gibson --

Judge Gibson?

ADMINISTRATIVE LAW JUDGE GIBSON:

Yes?

ADMINISTRATIVE LAW JUDGE CASTILLO:

Ms. Dalton.

MS. DALTON:

Judge Gibson, I was hoping to make a comment or a question unrelated to what's on the agenda about the handout before the public comment. So if I may, I'm going to start. So --

ADMINISTRATIVE LAW JUDGE GIBSON:

Was it -- I'm sorry.

Was it a different -- was it a handout that we gave you today?

MS. DOBEL:

Yes.

ADMINISTRATIVE LAW JUDGE GIBSON:

Great. So it's an agenda item. Have at it.

MS. DALTON:

Well, I think it is. It's responses to recommendations from May 14th, 2018, meeting.

ADMINISTRATIVE LAW JUDGE GIBSON:

It's not on the agenda.

MS. DALTON:

Okay. But it's handed out today.

ADMINISTRATIVE LAW JUDGE GIBSON:

I can't -- I can't -- if you have a comment, feel free to share it with

me offline. You want to put it on the agenda, you can.

MS. DALTON:

Okay. I'm wondering why it wasn't on the agenda, I guess, as well. That was my comment.

ADMINISTRATIVE LAW JUDGE GIBSON:

Normally, we don't have the previous responses on the agenda.

MS. DALTON:

I don't know -- it's unusual to hand it out and not discuss it, is all. So I'll just do a written comment and get it to OAH. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

And if you want to put it on the next agenda, I will. If there's a specific area you want commented on, I will.

All right. Any more public comment before we end?

Sacramento? For items not on the agenda?

Well, let me -- let's figure this out, though. If they don't have a quorum down there, they can make public comment that's not on the -- yeah. You are a public.

All right. You can make a comment as -- because you're nonvoting today. So feel free to make a comment.

MS. CORR:

Good point.

ADMINISTRATIVE LAW JUDGE TULLY:

No comments in Van Nuys.

ADMINISTRATIVE LAW JUDGE CASTILLO:

Ms. Dalton make a public comment --

ADMINISTRATIVE LAW JUDGE GIBSON:

Ms. Dalton may make a public comment for an item not on the agenda. How's that.

MS. DALTON:

I think I'll put something in writing, maybe. Up to you. Okay. If I can, then I will.

ADMINISTRATIVE LAW JUDGE GIBSON:

Do whatever you want.

MS. DALTON:

Then I'm going to do it. So I thought I must have missed something that wasn't on the agenda.

So first, I'm speaking to the handout responses to recommendations from May 14th, 2018, meeting. So it represents, obviously, OAH's response to the committee's recommendations -- the Advisory Committee's recommendations from two meetings, actually. But we did just vote on it on the 14th. Two really, like, vital, robust, intense. I think we all remember meeting about six hours' worth of discussion.

They also represent the fact that the school district -- those are school districts and those representing parents slash students agree to the point where it was recommended to OAH.

So my concern is that, with that in mind, that kind of agreed in concern raised, that of the eight recommendations, one was accepted. One was kind of accepted, if I added it right here, but I haven't seen it before today, but I believe I did. That's my first

concern of how -- finds to adopt the recommendation is pretty much a standard phrase throughout most of them. That's my first concern.

My second concern is that the explanations generally are vague. Now, the first one is not -- on the page one, it's not numbered, but it's page one. I won't go in depth, but the last line says, "This recommendation does nothing to mitigate the underlying issues and would be more expensive to taxpayers."

And then for one, two, three more, the entire response is "OAH applies to adopt the committee's recommendation for the reasons the previous proposal is declined." So that means it all goes back to there's nothing to mitigate the underlying issues and would be more expensive to taxpayers.

So at a minimum, I think it's too vague of a response. At a maximum, I think it's a leap to say it's more expensive to taxpayers. Anything may be more or less expensive depending how it's implemented or what administration -- kind of my concern about those recommendations and the result. So that's it. Thank you.

ADMINISTRATIVE LAW JUDGE GIBSON:

Thank you.

Any other public comment? All right. Our meeting is adjourned. Oh, yeah. One more.

MS. SHERLOCK:

I apologize. I have one -- this is Anne Sherlock. And my comment is about the search function on the website for OAH cases and orders. And we are having -- and I think it's collective. I've heard issues, concerns from a variety of different people.

And it's very difficult with the new search function to search for anything other than one word. You put in two words, the response is there's no cases on it. So, for example, if you search for special education, you'll get zero hits. And so that's a really big concern in our ability to search for cases using the OAH search.

ADMINISTRATIVE LAW JUDGE GIBSON:

So I'm going to respond.

MS. SHERLOCK:

Okay.

ADMINISTRATIVE LAW JUDGE GIBSON:

We know. We were told that at the time they rolled out the new website, they were going to give us a fancy new search function. And then a couple months before, that seemed like a surprise.

We currently have a very complicated thing with our -- we are in the middle of getting a robust, functional search function designed by ETS, which is our internal computer people. And we have just finished all of a bunch of stuff. We're working on the specs for it. It's as bad for us as it is for you.

We are working on it. And I am very hopeful that within -- now, it's state time; right? So, you know, I know -- and I don't want to dispartate -- somebody to go to another state, they're like, "Oh, we're on that state's time." Well, we're on state time, but we are robustly working with a set of clear requirements on getting a good, robust search function happening. We know it's crappy.

MS. SHERLOCK:

Thank you.

ADMINISTRATIVE LAW JUDGE CASTILLO:

Comment in San Diego.

ADMINISTRATIVE LAW JUDGE GIBSON:

Sure.

MR. SCHWARTZ:

I'd like to offer a temporary fix to that problem, at least to tie over the attorneys that need to search that.

If OAH could put that in a singular file that can be accessed on the website, you could do that on the last one. But the current website actually excludes you from seeing the entire archive of decisions and orders.

If those were made available and they could be downloaded, you can actually search them on your computer.

ADMINISTRATIVE LAW JUDGE GIBSON:

You know there's 20,000 documents; right?

MR. SCHWARTZ:

I have downloaded about 7500 possibly at this point that create -- or after C-HO -- the C-HO ones are a little harder to download than the old site. The other ones were capable of downloading, and they are now incapable of downloading.

ADMINISTRATIVE LAW JUDGE GIBSON:

We're not in charge of those CDs.

Okay. Cool. That's good. I will take that under advisement.

All right. We are adjourned. It's been super great. Actually, I really enjoyed this meeting today. I think it's been really helpful. I look forward to getting my recommendations out earlier than I did last time, and I look forward to seeing you all the third Friday in October. Bye, everybody.

(Advisory Committee Meeting adjourned at 12:29 15 p.m.)