

TRANSCRIPTION OF RECORDED MEETING
OF
SPECIAL EDUCATION DIVISION
ADVISORY COMMITTEE MEETING
OCTOBER 18, 2024

Board Members Present:

DANIEL SHAW
APRIL MCCOY
ALFONSO PADRON
DAVID MOLINA
EUGENE MOSQUEDA
JENNIFER ADAMS
KIMBERLEE O'MALLEY
DAVID PALMER
DEBRA KAMM
LAUREN ASHLEY-MENDEZ
JUSTIN SHERRELL
SUZANNE SNOWDEN

OAH Staff Present:

PETER PAUL CASTILLO
MAURENE TROTTER
CLAIRE YAZIGI
BOB VARMA

Spanish Interpreter: BRENDA TAMEZ

Transcribed by:

SHERRY MAINUS, NCCR, Sacramento, California

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

OCTOBER 18, 2024

DIVISION CHIEF CASTILLO:

And the closed captioning?

Good morning. My name is Division Chief Peter Paul Castillo. I will have this introductory stuff -- material start with consecutive translation.

Are you ready, Ms. Tamez?

INTERPRETER TAMEZ:

Yes, sir.

DIVISION CHIEF CASTILLO:

Okay. Good morning. My name is Division Chief Peter Paul Castillo. Okay.

I'm going to give instructions now for Spanish Language interpretation feature. For attendees by video conference that would like to listen to the proceedings interpreted into Spanish, we will be turning on the interpretation feature.

The interpretation feature is not available for --

INTERPRETER TAMEZ:

Go ahead, Your Honor.

DIVISION CHIEF CASTILLO:

-- for telephone. When this feature is turned on, you will see a button in your meeting control at the bottom of your screen.

It will either be a globe saying interpretation. Ms. Tamez, you still here? Can you still stay in the main channel for the moment? You need to just turn on original audio.

UNIDENTIFIED FEMALE VOICE:

Maureen, can you please turn the interpretation feature off for a moment?

DIVISION CHIEF CASTILLO:

Thank you.

INTERPRETER TAMEZ:

Thank you.

DIVISION CHIEF CASTILLO:

Okay. Yeah, just hold off on turning it on until I say.

So, when the interpretation feature is turned on, you'll either see a globe on the bottom that says interpretation or -- and the button says more. If you click the three dots, you'll see interpretation.

When the feature is enabled, if you want to listen to it Spanish choose Spanish. And if you're in the Spanish channel, all you will hear is the interpreter.

If someone in the Spanish channel has something to say to the Committee, Ms. Tamez will switch to the English channel and interpret for us.

It is important for all Committee members and attendees who are not choosing the Spanish language channel to choose this channel. That will ensure that your comments are heard by the Committee and put on our recording.

Maureen, if you can please turn on the interpretation feature? And if people can choose the appropriate channel.

Call to order, good morning. Welcome to the October 18, 2024, Advisory Committee Meeting.

Reminder that this meeting can be recorded by separate devices by any individual who is observing here today, notwithstanding the notice that was at the beginning when you logged on into the meeting.

Thanks for members of the Committee who are attending and present here today. And thank you for the attendees present.

As I've indicated, my name is Division Chief Administrative Law Judge Peter Paul Castillo of the Special Education Division of the Office of Administrative Hearings. And I am present in our San Diego office for the Southern California Committee section.

Present in our Northern California section Committee location is presiding Administrative Law Judge Joy Redmon.

Present remotely is Administrative Law Judge Claire Yazigi, who will be our secretary and will be taking notes here today.

Present in our Sacramento office also is Maureen Trotter, Staff Service Manager.

And also assisting today are Special Operations Staff, Anna Brown, Laurie Crom, and Trinity Dorantes.

I'd like to introduce new OAH staff. We have Administrative Law Judge, new, Daniel Senter, who is in our Oakland office. And also new special education staff, Argentina Kuniansky, Adam Levine, and Ashley Ames, who all started since the last meeting.

Reminder to all OAH employees to please turn off your cameras if you're staying on for the rest of the meeting.

This is a combined meeting of the Southern California Advisory Committee and the Northern California Advisory Committee.

I will soon begin taking roll to establish a quorum. This is a reminder to the members that we're attending by video conference, that your cameras must be on at all times. That is a requirement of the Bagley-Keene Open Meetings Act that your cameras be on at all times.

If there's any technical difficulties, please say so. There is an exception for that. But we'll have to put that on the record.

So, I will be taking roll first with the Northern California office. If you are present please say I. Alfonso Padron.

MR. PADRON:

I.

DIVISION CHIEF CASTILLO:

April McCoy?

MS. MCCOY:

I.

DIVISION CHIEF CASTILLO:

Daniel Shaw?

MR. SHAW:

I.

DIVISION CHIEF CASTILLO:

David Molina?

MR. MOLINA:

I.

DIVISION CHIEF CASTILLO:

In our Sacramento office, Eugene Mosqueda?

MR. MOSQUEDA:

I.

DIVISION CHIEF CASTILLO:

And Jennifer Adams?

MS. ADAMS:

I.

DIVISION CHIEF CASTILLO:

Okay. We have all six members in Northern California and a quorum.

For Southern California, David Palmer?

MR. PALMER:

I.

DIVISION CHIEF CASTILLO:

Debra Kamm?

MS. KAMM:

I.

DIVISION CHIEF CASTILLO:

Justin Sherrill?

MR. SHERRILL:

I.

DIVISION CHIEF CASTILLO:

Kimberly O'Maley? Ms. O'Maley, you're on mute.

MS. O'MALEY:

I.

DIVISION CHIEF CASTILLO:

Lauren Ashley-Mendez?

MS. ASHLEY-MENDEZ:

I.

DIVISION CHIEF CASTILLO:

Suzanne Snowden?

MS. SNOWDEN:

I.

DIVISION CHIEF CASTILLO:

Okay. We have a quorum in both sections, six in Southern California, six in Northern California.

There will be no new members between now and the next meeting in June of 2025. The expectation of members, all members are expected to attend every meeting. The meeting will be held on the third Friday of June and the third Friday of October every year.

If a member is not able to attend, they should notify the Office of Administrative Hearings as soon as possible.

If a member misses two meetings, they may be removed from the Committee. And OAH will start the application process and choose a replacement.

The Open Meeting Act indicated that the members must have their cameras on during the meeting. This advisement -- the Bagley-Keene Open Meeting Act. A copy has been sent to each Committee member. And a copy of the Act and the California Department of Justice guide is on the OAH website.

Committee member, when it is time for discussion, please raise your hand. On the bottom feature there is a raise hand function for those attending by video conference. And I will call upon you. For Mr. Mosqueda, who is attending personally, if you can raise your hand.

And Ms. Trotter or Judge Redmon, if you could just remind me that Mr. Mosqueda's hand is up. And I will call upon him.

If for some reason the raise hand function for the video conference attendees is working, please raise your own personal hand or unmute yourself and say your name. And I'll call you.

This meeting is being recorded through Zoom. And a transcript will be made after the completion of the meeting.

Are there any comments or questions from the Committee members about the operation of Zoom or the hearing -- or the Committee process? Ms. Kamm?

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MS. KAMM:

Hi, I'd just like to have (inaudible) question on the agenda. Every Bagley-Keene Act meeting, I believe, and that I've actually attended, there's always a section where the Committee or the body adopts the agenda.

And I do not see that on here. And it appears that OAH is unilaterally determining what is on the agenda for these meetings.

Once again, our recommendations have been censored. And the agenda does not reflect what the Committee has requested to be on the -- to be on the agenda.

So, I am -- I would like to know what -- where OAH has the authority to unilaterally put together this agenda for this meeting.

I've looked at the IDEA and the inter-agency agreement with CDE. And I've been unable to find any such authority.

I also have never been given bylaws for this Committee. So, if I'm missing something can you please -- how OAH has the right to (inaudible) Committee member by censoring our items that we have requested to be on the agenda. And where it has the unilateral authority to do so.

DIVISION CHIEF CASTILLO:

Uh-huh.

MS. KAMM:

Thank you.

DIVISION CHIEF CASTILLO:

That is one of the discussion items in the proposed recommendations. And we will get to that. And that can be discussed at that time period and recommendation be made.

Going on, when it's time to discuss the substantive agenda items, the Committee member who made the proposed recommendation will be asked to speak first. If there's any technical terms that require OAH guidance or explanation, I will provide any OAH -- (inaudible) in a prior meeting.

Then it will be opened up for comment by any Committee member. After the Committee members have finished discussing the agenda item, then we'll take public comment from the attendees.

Please raise your hand. You'll be called on. And then you will be invited in to meeting and to give your comment. You'll have three minutes. At the end of three minutes you will -- that will be the end of your comment period.

Then, any email comments will be read. For people sending email comments in, please state the agenda item that you want your email comment to go to.

Items that have no -- we cannot identify, will be put into the public comments and read at the end of meeting.

At the end of Committee and public comments on agenda item, I will then ask if there is a recommendation from any of the members of -- regarding the agenda item.

If you want to make a recommendation it is suggested that you please write it down that you want OAH to consider. I will then ask for Judge Yazigi to request some clarification to make sure that she has it properly identified and so we get it correct.

After it is seconded, then we will take comments from the Committee member, public comments, email comments, then a voice vote. The voice vote will be recorded.

Since this is two Committees, if it passes either the northern or southern or both, OAH will make -- will respond to the recommendations before the agenda items are due before the next June meeting.

Before we get into the substantive items, I would like to identify a chair to collect agenda items for the June 2025 meeting -- June 20th, 2025, meeting.

It is asked that for one in Northern California and one in Southern California. Each member, if they have proposed recommendations that they would like OAH to consider and discuss at the next Advisory Committee meeting as an agenda item to send to that chairperson for each Committee. And those persons then will send that to the Office of Administrative Hearings.

Is there someone interested in Southern California about collecting the agenda Items. If you could raise your hand. Ms. Kamm.

MS. KAMM:

I am fine with continuing on with the position, as there has never been any kind of policy or procedure given to us that there would be any other indication of our service, other than that we would continue on with our chair position for our full term.

And my full term is not up until, I believe, June 2026. So, with their being no other kind of policy or procedure, I think that it makes sense that the chairs who have been chosen continue for their full term. And I am happy to do so. Thank you.

DIVISION CHIEF CASTILLO:

And we appreciate that -- your service, Ms. Kamm. I make this for if somebody is interested in stepping down and then somebody else coming aboard.

Is there anybody else in Southern California? Seeing none, Ms. Kamm will be the person tasked with collecting the agenda items for the Southern California members and forwarding that to the Office of Administrative Hearings.

Is there anyone interested for Northern California? Mr. Molina.

MR. MOLINA:

Yes, I'm okay to continue doing the -- doing the position.

DIVISION CHIEF CASTILLO:

Okay. Is there -- thank you, Mr. Molina. Is there any objection for that in any of the Northern California members?

Seeing no objection, Mr. Molina will continue being the collector of agenda items for the June meeting. And Mr. Molina's term is the same as Ms. Kamm's, and expires in May of 2026.

With that, we are going to go to agenda item four. It starts the recommendations for OAH. I will read the recommendation. And then we'll have the member address that.

Recommendation that OAH provide written criteria being used to consider requests for in-person mediations and hearings on a case by case basis and set a date for discussions regarding in person mediations and due process hearings. Ms. Kamm.

MS. KAMM:

Thank you. First, I would like to note that I do not believe that I received an answer to my question about where OAH has the authority to unilaterally determine the agenda. That I do not see any recommendations on that. And a recommendation is different than answering my question.

And just so that you under -- so that the whole Committee understands. For the second time, I have been censored. And the Committee has been censored.

The OAH or Mr. Castillo, I'm not sure who at OAH, unless Mr. Castillo you have done this on your own, have removed and censored the recommendation that OAH obtain proof from School Districts that OAH filings have been properly authorized by the School District or Board designee.

That is hugely important to show that the School District actually has standing to initiate or engage in litigation per the Brown Act.

So, I don't know why that item was omitted again. So, could you please address that, Mr. Castillo?

DIVISION CHIEF CASTILLO:

The Office of Administrative Hearings has addressed that issue in a prior recommendation.

The Office of Administrative Hearings, when reviewing agenda items, would like to have discussed new items and not repeat prior discussions.

So, the intent is to look at the agenda items and not to repeat agenda items that have already been discussed and answered.

MS. KAMM:

I do not believe that that was answered. The other issue that was also omitted was a recommendation that when Parents request a public hearing that it's conducted via videoconference. And that OAH allow the public to observe the hearing live in real time.

And I don't believe that we actually discussed that in depth either.

DIVISION CHIEF CASTILLO:

That was a prior -- that was a prior recommendation from the Committee that OAH responded to. And right now if there is a request for an open hearing, the hearing is open. And members of the public may attend and observe the Zoom video conference.

We've had numerous open Zoom video conferences, I mean, video hearings conducted since the recommendation went -- and OAH's response went forward.

MS. KAMM:

Okay, good. That is good to know. Okay. So, I will move on then to the recommendation that you just read. And as you read, that's -- right now the in person mediations and hearings are only determined on a case by case basis.

So, the recommendation is that there is written criteria provided so that everyone is clear as to exactly how OAH is making that decision.

DIVISION CHIEF CASTILLO:

And the second part of setting a date for discussions?

MS. KAMM:

Yes, and I believe that you already read that. And to set a date for discussions regarding in person mediations and due process hearings.

DIVISION CHIEF CASTILLO:

Any comments by any other Advisory Committee member? Ms. O'Maley.

MS. O'MALEY:

I really see a recommendation as being one that we discussed before. Where if a Parent requests an in person hearing they should get it. It should be the Parent's right to request that on behalf of the Student.

So, I'm confused by this setting a date for discussions. That's what I'm confused by. What does that mean, set a date for discussions?

MS. KAMM:

Well, what --

DIVISION CHIEF CASTILLO:

OAH's --

MS. KAMM:

Do you want me to continue?

DIVISION CHIEF CASTILLO:

I'll defer to Ms. Kamm to answer that question. And then I think Mr. Padron, then I'll have you Ms. Kamm.

MS. KAMM:

Thank you. I just wanted -- I can clarify.

DIVISION CHIEF CASTILLO:

Okay.

MS. KAMM:

And I appreciate the question. I totally agree with you, Ms. O'Maley that there really should not be any wavering from the Parent's right.

However, if there is to be a discussion on this then I -- then I was proposing that we actually set a date to have a meeting to discuss this more in depth

However, that is certainly not required. And I would be happy to remove that part from the recommendations.

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DIVISION CHIEF CASTILLO:

I think it was decided to in a prior recommendation from this body that OAH response on this topic was that it would set up a meeting. Which it has not done out yet.

Mr. Padron.

MR. PADRON:

I think Ms. O'Maley had her hand up. If she'd like to go before me that's fine.

DIVISION CHIEF CASTILLO:

Okay, Ms. O'Maley.

MS. O'MALEY:

I don't -- I don't see why we can't discuss it today, that this be the date that we discuss it.

MS. KAMM:

Agreed, agreed.

MS. O'MALEY:

Because it came from before.

MS. KAMM:

Yes.

MS. O'MALEY:

So, why are we rolling the can down the road? Let's just --

MS. KAMM:

Yes.

MS. O'MALEY:

-- let's just discuss it now. This is the date we should discuss it.

MS. KAMM:

Agreed. I will -- I will modify the recommendation to omit that second part.

Thank you.

DIVISION CHIEF CASTILLO:

Okay. It is fine to discuss it. It is up to the Committee members and how they want to discuss a recommendation within reason. And that is an appropriate thing to discuss.

So, Mr. Padron.

MR. PADRON:

Yes. A couple of things. But in reference to what Ms. Kamm had mentioned about sending in a recommendation and it not appearing in the agenda, I also had that happen. I sent my recommendation to Mr. Molina. And he submitted it. But it doesn't appear in the agenda.

Now, your response earlier was that it had already been talked about in a previous recommendation. I've just been on this Committee, this is my second meeting. I don't remember it being discussed.

So, that -- there is an issue with that. And it was pertaining to, and I'll get back to the previous. My previous recommendation was pertaining to a decision by an ALJ in where the first part of my recommendation was agreed upon by OAH that anyone present, including ley advocates, would be published that they were actually present at the meeting.

And you agreed that that would happen. But I would like to know if you can do a retroactive to that day of that meeting, I mean of that hearing, is for it to be published.

You said it would, but I haven't seen a modified decision published, as well. And I would like to see that.

The second part is that Ms. Kamm mentioned who is the one that decides not to put an item on the agenda. And I understand that if we have, you know, everyone put several agenda items we won't be able to get to it. Just like it happened at the last meeting.

And then, unfortunately, we didn't have enough time to have a second meeting. So, therein, where lies the issue, if that continues then what is -- what is the criteria to submit a recommendation.

And where would that recommendation fall? Would it fall within the realm of, well, we already discussed it --

DIVISION CHIEF CASTILLO:

Mr. Padron, that's agenda item six. That can be discussed at that time. As to decisions, we -- OAH did provide a response.

Administrative Law Judges have been instructed as to if there is a lay advocate providing assistance pursuant to the Education Code about what to put in their decision.

However, once our decisions are issued, they are final decisions. And we do not go back to modify or edit them, other than to correct ministerial error.

So, basically what you're requesting is for OAH to go back to all the other prior decisions and update them. And that's something that OAH cannot do. So, trying --

MR. PADRON:

I'm not sure --

DIVISION CHIEF CASTILLO:

-- to get back to -- I want to get back to this. There was a question about the agenda item.

I think it's very important for a lot of the Committee members and a lot of the attendees here today about in person hearings and what is the criteria for OAH to consider. Do you have anything on that topic, Mr. Padron?

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MR. PADRON:

Yeah. I want to say that I didn't ask to go retro in 10 years or 20 years. I was asking just to go retro to that one issue where it was -- it happened.

Because all the others, they had been providing the information.

DIVISION CHIEF CASTILLO:

Mr. Padron, we've answered that question. So --

MR. PADRON:

Oh, I know. I know you're trying to cut me off. I get it, I get it. And I will be silenced here. I don't have any other issue on the matter. But go ahead and continue with the meeting.

DIVISION CHIEF CASTILLO:

Ms. Snowden.

MS. SNOWDEN:

Yes, good morning. I'm a new member. So, forgive me if I'm, you know, not up to speed. But I wanted to ask Ms. Kamm, has this been an issue that Parents have requested an in person mediation and hearing and it's not been accepted?

MS. KAMM:

Yes, that is my understanding. And the issue is that the procedure says that it's only allowed on a case by case basis.

And I think that that opens it up to a known criteria. We have no idea who is making that decision and what that decision is based upon.

And that really should be the right of every Parent. It should not be something that is only doled out to some Parents and not others. That's the concern.

MS. SNOWDEN:

Is there -- does -- has OAH published how they determine? Or how is it determined who gets an in person and who doesn't?

MS. KAMM:

That's actually the recommendation, that OAH does provide the written criteria. Because right now that criteria is unknown.

MS. SNOWDEN:

Okay. I guess I'm just asking currently how does OAH proceed? How is a request for in person?

DIVISION CHIEF CASTILLO:

In response to Ms. Snowden's question, Parents have made motions or put in the pre-hearing conference statement a request for an in person mediation and/or hearing. And OAH will issue a written order that goes back to the parties on this, giving the reasons why the request is granted or denied.

MS. SNOWDEN:

Okay, thank you.

DIVISION CHIEF CASTILLO:

Mr. Palmer?

MR. PALMER:

Yes, thank you. I just want to say earlier that you mentioned that your responses to, not yours, but OAHs responses to recommendations are sent. And I don't recall receiving that from the last meeting.

I think that could help clear up some of the questions that linger. And maybe it went in my junk folder, I don't know. But I don't recall receiving that.

In regards to this item. I think it's just black and white. The Parent has a right to request this. There should be no other criteria. They request it and it's honored.

I don't, I mean, I don't understand what would be the reason not to honor it. And what would be the criteria to determine that. And who determines that.

I mean, to me it's just black and white. Parent has a right to request it, and it happens.

DIVISION CHIEF CASTILLO:

Ms. Trotter, does Mr. Mosqueda have a comment?

MR. MOSQUEDA:

I had a question, Mr. Castillo. I just -- it sounds like that's the typical timeline for requesting an in person or a video request.

Have you received or has the office received feedback regarding that from either party, that they would request the other but wasn't given that?

DIVISION CHIEF CASTILLO:

The parties have requested open hearings, they predominantly have been denied on the basis that the Office of Administrative Hearings has authority under California regulations to conduct videoconference hearings and mediations.

And we set forth the explanation by in those orders. And those hearings then have proceeded by videoconference.

To the best of my knowledge there has been no appeal taken up with the United States District Court on that topic.

Mr. Molina.

MR. MOLINA:

Yes, thank you. What is the criteria by which OAH uses to determine whether a meeting will be -- will happen in person or not?

DIVISION CHIEF CASTILLO:

I think that's the recommendation OAH will respond to that and set it forth in the response to the recommendation.

MR. MOLINA:

So, is it -- is it -- is there a specific criteria list or checklist? Or is it really explicitly on a case by case basis without any really real guidelines?

DEPUTY DIRECTOR VARMA:

Judge Castillo, if I may --

DIVISION CHIEF CASTILLO:

Judge Varma?

DEPUTY DIRECTOR VARMA:

-- interject for a moment. Judge Castillo has explained that it's case by case. And it's determined along the pattern of that case and the facts of that case.

If the Committee wishes to discuss what they would like to see as a recommendation to us, that is what should be happening.

MS. KAMM:

I'm sorry, who was that speaking? I wasn't able to determine.

DEPUTY DIRECTOR VARMA:

This is Deputy Director -- this is Deputy Director Bob Varma.

The purpose of the Committee is for the Committee to discuss items that they wish to make recommendations on. We have explained to you how it's being done currently.

If you wish to see that pattern change or that process change, that is what the discussion should be about.

DIVISION CHIEF CASTILLO:

What I've heard are -- from several members is that if a Parent requests an in person event, that OAH automatically grant it. Besides that, are there any other criteria for the case by case for OAH to put forward for the party -- for OAH to consider when a request is being made? Mr. Shaw?

MR. SHAW:

Yeah, I think what I'm hearing is that it would be helpful for OAH to let folks know what criteria does constitute essentially good cause.

I've reviewed some of the orders denying requests for in person hearings. And it's primarily on the basis of the California Code of Regulations Title 5, Section 3082, which gives the hearing officer authority to conduct a hearing or part of the hearing via telephone. Which I'm not even sure most people have landlines anymore, television, or other electronic means.

And so, in the orders I've reviewed, the denials on the basis of not citing to authority that says OAH can't do this. But I think what the problem is, we don't have criteria to understand when it can happen.

So, for example, if you have clients who are visually impaired, you cannot access videoconferencing, cannot look at evidence via --

DIVISION CHIEF CASTILLO:

Case Center.

MR. SHAW:

-- Case Center, thank you. Or if you have a low income client who can't, you know, doesn't have access to reliable wi-fi or even a computer.

I've heard from a colleague that a denial was made on the basis -- or explained at a PHC that, well, why don't you just go buy that person a computer and set it up for them and so on.

And so, I think what folks are struggling, because this issue has come up over and over, is what is the criteria? What is the basis of good cause that would constitute an in person hearing?

And I can think of many situations that might constitute good cause but kind of feel like we're stuck shooting in the dark at what that might look at from the perspective of the, you know, tribunal who's going to make that determination.

DIVISION CHIEF CASTILLO:

Ms. Kamm.

MS. KAMM:

All right, thank you. For those of us who are not attorneys, and I think that's the majority of those -- of us on the Commission -- on the Committee, as well as people that are participating and listening to this.

Mr. Castillo, you mentioned some legal authority. And I don't know if it was the same California Education Code that Mr. Shaw mentioned.

DIVISION CHIEF CASTILLO:

It is -- it is -- let me be heard. It is the same regulation that Mr. Shaw mentioned.

MS. KAMM:

Okay. So, for this -- for those of us who are not familiar with that. Can you please clarify, does that California Education Code preclude in person mediations and hearings? Or does it just give the authority to the Hearing Officer to also hold mediations and hearings via electronic means?

DIVISION CHIEF CASTILLO:

The orders that have gone out have explained OAH's authority to hold video conference events, hearings and/or mediations.

MS. KAMM:

Mr. Castillo, that's not helpful to those of us who don't -- who haven't seen those orders and haven't seen the rationale.

I'm just simply asking, since you have brought up the Education Code, and so did Mr. Shaw, can one of you please just clarify, does that California Education Code preclude in person mediations and hearings? Or does it simply just give the authority to hold those hearings electronically also, in addition to holding in person hearings? That's all I'm asking.

DIVISION CHIEF CASTILLO:

It does not preclude in person events. The regulation dates back to the mid-'90s.

MS. KAMM:

Thank you.

DIVISION CHIEF CASTILLO:

Mr. Padron.

MR. PADRON:

Yes, I think that what we're missing is that videoconferencing basically became popular during COVID. I think that's what we're missing, is that, I think, from my perspective, is that OAH has found that now it's easier. If that's actually the word or definition of why you're using videoconferencing.

Because I'm hearing one of the attorneys, and I'm hearing others say that the Parent has the right to ask for it.

But I think what they're trying to say is that the Parent has the right to have it. To have in person so that you can see the Judge.

I remember back then, when I was allowed as an advocate to speak. And it's a whole different experience when the Judge is there, and she's seen the remark -- she's listened to the remarks. And she's seen the actual facial features of the witnesses.

And so, it's a whole different world. But you're explaining that off as in the 1990s there's a code that says in some type of a, I don't know if it's Ed Code or administrative law, that you can have them.

So, you're just kind of skirting the question. Is, are they, I guess the question is are they going to allow -- OAH going to allow Parents to have an in person mediation and/or hearing?

DIVISION CHIEF CASTILLO:

And that'll be in the OAH's response to any recommendation. Mr. Molina?

MR. MOLINA:

Yeah, I want to continue the support of the recommendation that OAH keeps it as an actual right that the Parent can demand having first person meetings.

As a person who's done research on the psychology of internet, the psychology of computer science, there is a film of pseudo-anonymity that comes into play when you put an electronic media between two persons.

And that removes a lot of the emotional content that I believe that people are connecting to when they're actually having a discussion.

And I don't think anyone who's had -- stood in front of a Judge on a computer versus stood in front of a Judge on a bench could say that they felt the weight differently.

So, it's very important that we maintain the ability for Parents who are making these critical requests to have the ability to make these in person in front of live people. I think it's a much more impactive way of presenting a person's case.

DIVISION CHIEF CASTILLO:

Mr. Mosqueda.

MR. MOSQUEDA:

I have no comment and no questions now.

DIVISION CHIEF CASTILLO:

Okay. Ms. O'Maley.

MS. O'MALEY:

I would like to make a recommendation that if a Parent requests an in person hearing --

DIVISION CHIEF CASTILLO:

Ms. O'Maley --

MS. O'MALEY:

-- that they be given an in person hearing as opposed to the criteria. Because I don't think we're going to be getting an answer on the criteria. Other than they do it on a case by case basis.

We've asked by this before. And we don't get a -- we're not going to get into the, kind of the black -- the black envelope there.

So, I would like to take this recommendation and shift it from criteria to if a Parent requests an in person hearing they be granted it.

DIVISION CHIEF CASTILLO:

Ms. O'Maley, we'll take the recommendations after we get any comment -- public comments.

MS. O'MALEY:

Okay.

DIVISION CHIEF CASTILLO:

So, just remember that. And then when I ask for recommendations just raise your hand.

MS. O'MALEY:

Okay.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Yeah, just so the Committee understands, if you -- if you want to Google the right Government Code Section to better read it. It's Cal Government Code Section 11440.30.

And what it -- again, as I explained earlier, it permits the OAH to conduct a hearing via videoconferencing.

And it also explains that a party can object, and the Presiding Officer, I assume that's reference to Administrative Law Judge or its equivalent, shall take that under consideration and ultimately decide how to proceed forward.

And again, I think this is the part that folks are struggling with is understanding what constitutes an appropriate objection that would require an in person hearing.

DIVISION CHIEF CASTILLO:

I'd like to note that when the California Department of Education adopted its regulations in the mid-'90s, that Government Code Section read differently. But the California Department of Education, in its regulations, did not adopt that.

MR. SHAW:

Just for clarification, you're saying that Government Code Section 11440.30, because that's what I'm seeing cited to by the OAH in some of these orders.

DIVISION CHIEF CASTILLO:

Yeah, oh. There's some application. But there's also it doesn't apply in full, so.

I don't review all the orders that Presiding Judges do. So, I will discuss that with them.

Ms. Kamm.

MS. KAMM:

I guess I'm a little confused, not being an attorney. It sounds like, Mr. Shaw, you're saying that the default is to have it electronically and not in person. And that's -- and that Parents actually have to apply or file a motion in order to have mediations and hearings.

But as the previous Committee member mentioned, to my knowledge, prior to COVID all mediations and hearings were in person. There was no default to electronic means where Parents had to specifically request that it be in person.

The default actually was in person. That's my understanding.

DIVISION CHIEF CASTILLO:

Okay. I see no more Committee hands up. Yes, Ms. O'Maley.

MS. O'MALEY:

Yes, all hearings were done in person prior to the pandemic and prior to COVID. I probably did over 100 of them.

And they were all done -- there was never a question of whether done in any manner other than in person.

DIVISION CHIEF CASTILLO:

Okay. I'm going to move -- Ms. Snowden.

MS. SNOWDEN:

Yeah, I just wanted to, Ms. Kamm I think what Mr. Shaw was saying is that it's discretionary. So, the OAH -- the ALJ has the discretion, not that it's a default or a, you know, one or the other. It's discretionary to the ALJ. Thank you.

DIVISION CHIEF CASTILLO:

We have -- we're going to go to the -- Mr. Molina.

MR. MOLINA:

Just I understand that it's discretionary. But it's important that the Parents are the ones that are making the decision in this.

Because they're the ones pleading the cases. They're the ones that are already at an emotional and energetical disadvantage when dealing with these situations.

So, allowing them the humanity to present their case in person, if that's what they choose, I believe is really important.

DIVISION CHIEF CASTILLO:

Okay. While I do not want to cut off Committee comments, there has just been a repetition of the same thing.

I would like to go get the comments from the attendees. I think it's very important that we get their comments and their thoughts is a part of -- very important part of the process. Such as many of them are Parents involved in this process.

So, we'll go to attendees. Adriana Delasantos. Will you please invite them in?

MS. DELASANTOS:

Can you guys hear me?

DIVISION CHIEF CASTILLO:

Thank you. We can hear you. And your three minutes starts now.

MS. DELASANTOS:

Thank you. Good morning to everyone. First, I'd like to say that I respectfully disagree with Mr. Bob Varma's view in regards to what this Committee is here for.

I do believe that this Committee is representing all of us. So, the Committee has to be informed in order for them to be able to make the appropriate decisions.

So, them not receiving answers is not appropriate. So, I -- again, I respectfully disagree with what the -- what the Committee is here for in regards to his statement.

Secondly, I completely agree and support Mr. Molina's commits, Ms. Kamm's comments. The Parents, we should have the ability to make that determination.

We Parents also have a lot going on. I have been fortunate that I have not gone through the OAH process. But there's so many things that are going on in our daily lives. Some of us are also persons with disabilities.

So, for this other issue to be added onto us is something that could be avoided with your help, Committee. So, thank you for what you all do. And yes, Ms. Kamm, thank you for bringing this up. Thank you for your time.

DIVISION CHIEF CASTILLO:

Is there any other public attendees who would like to make any public comment on this?

Do we have any email public comment on this topic?

MS. TROTTER:

No, we do not have any email comments.

DIVISION CHIEF CASTILLO:

Thank you. It's time for any recommendation. I'm going to go first with Ms. O'Maley, since you had a recommendation that you wanted to make.

MS. O'MALEY:

(Inaudible) the Parents (inaudible) to the medium that the hearing proceeds in. And if the Parent's requesting an in person hearing, it should be honored. It should be -
- it should be granted.

DIVISION CHIEF CASTILLO:

Judge Yazigi, could you repeat that?

MS. YAZIGI:

What I understood from the recommendation is that OAH should grant any in person proceeding, due process hearing, if requested by the parent.

However, I do have a question as to what happened to Committee member's Kamm -- Committee member Kamm's recommendation on agenda item four?

DIVISION CHIEF CASTILLO:

I will get to Ms. Kamm in a moment.

MS. YAZIGI:

All right, have I accurately captured Committee member O'Maley's recommendation that Parents be the one to decide whether due process hearing occurs in person?

MS. O'MALEY:

Yes, that should be the Parent's determination as to the medium of the proceeding. Whether it be mediation or due process. And if a Parent requests in person it should be automatically granted.

MS. KAMM:

I'm fine with revising my recommendation to the wording from Ms. O'Maley, based upon the conversation we've had here.

DIVISION CHIEF CASTILLO:

Thank you, Ms. Kamm. Would any -- would anyone like to second Ms. O'Maley's recommendation?

DIVISION CHIEF CASTILLO:

Mr. Palmer.

MR. PALMER:

Yes, that's why I raised my hand. I second.

DIVISION CHIEF CASTILLO:

Okay. I did see two -- I see that a couple people had raised their hands. I just need to get it on the record and audible for the transcript purposes.

So, are there any Committee member comments regarding Ms. O'Maley's recommendation.

MS. KAMM:

I would just like to clarify, just procedurally, Ms. O'Maley has made the recommendation that my recommendation be edited or revised. And so, that is what we're discussing, is that correct?

DIVISION CHIEF CASTILLO:

On Agenda item, members may make, whether or not it's you Ms. Kamm or the other members, any recommendation related to the agenda item.

So, you may -- I'm just going first with Ms. O'Maley, because she wanted to make it during the public comment. I will get back to you, if you want to make this as part of your agenda item. Or just go with what Ms. O'Maley has put forward.

MS. KAMM:

Okay. I'm not sure --

DIVISION CHIEF CASTILLO:

So, I'm not -- I'm

MS. KAMM:

-- I'm not sure if I'm --

DIVISION CHIEF CASTILLO:

-- not going to preclude anybody else. I just wanted, because the way Ms. O'Maley was in the public -- during the public comments. I just wanted to go with her first.

MS. KAMM:

Okay. I'm not sure I quite understand procedurally. But okay, I -- as I said, I am fine with editing my recommendation so that it matches Ms. O'Maley's wording in her recommendation.

DIVISION CHIEF CASTILLO:

Okay. And we have a second from Mr. Palmer. Mr. Shaw?

MR. SHAW:

Just my only other comment is as I read through these regulations, it seemed pretty apparent that the way the California State Regulations are set up is it gives the OAH authority to do this over a Parent or even a School District's objection.

So, currently as worded, it is kind of a nothing (inaudible) so to speak. Because they're not going to pass a policy that says if a Parent asks for it, it has to be granted.

Because that discretion lies with the Hearing Officer pursuant to regulations and laws that are in place that we might not agree with.

I think I would support having more specific criteria for the OAH so we better understand in what situations their discretionary authority might weigh in the favor of a family or requesting an in person hearing when it is, in fact, appropriate.

DIVISION CHIEF CASTILLO:

Would you like to make a recommendation, Mr. Shaw?

MR. SHAW:

Not at this time, no.

MS. YAZIGI:

This is Claire Yazigi again. I just -- I've had an opportunity to type everything out very simply.

What I have Member O'Maley's recommendation to be is that mediation or due process hearings be held in person upon Parent request.

DIVISION CHIEF CASTILLO:

Did that capture it, Ms. O'Maley? You're on mute, Ms. O'Maley. You're still on mute.

MS. O'MALEY:

That the medium of the mediation or hearing be at the discretion of the Parent. And if the Parent request in person it be granted.

DIVISION CHIEF CASTILLO:

Mr. Palmer.

MR. PALMER:

Yes, I'm hearing what Mr. Shaw has shared. I am concerned that we dismiss the request for criteria. Because, obviously, there's Ed Code or law in place that allows OAH to make that determination.

So, I mean it's Ms. Kamm's motion, or recommendation. But I think we still need to understand the criteria if and when that decision is made overruling the Parent's request.

DIVISION CHIEF CASTILLO:

As I indicated that the agenda item goes upon the agenda item recommendations from a member.

But any member may propose after the discussions that we've had, in listening to other members, the Committee, and then the members of the public, a recommendation.

So, if you'd like to make a recommendation, Mr. Palmer, you may on this topic.

MR. PALMER:

Well, then yes I would like to recommend that we be provided with the criteria used to determine on a case by case basis.

And I say that, too, because we're not going to be allowed to revisit this issue. So, we need to get that now.

DIVISION CHIEF CASTILLO:

Judge Yazigi, do you have sufficient to make -- put down a recommendation?

MS. YAZIGI:

I understand Member Palmer's recommendation to be the same as Member Kamm's, which is that OAH provide written criteria being used to consider requests for in person mediations and hearings on a case by case basis.

DIVISION CHIEF CASTILLO:

Okay.

MR. PALMER:

Yes, that is correct.

DIVISION CHIEF CASTILLO:

Would anyone like to second Mr. Palmer's recommendation? Ms. Kamm.

MS. KAMM:

I will actually second his recommendation. And as I am not an attorney, and I was not aware of the Ed Code or the, I guess it's the Government Code.

Which I'm really confused now, because Mr. Shaw referenced a Government Code regarding this. But then Mr. Castillo said that OAH does not follow that Government Code. So, this is all getting very confusing to me as a non-attorney.

So, I think that I do need to actually go back, second, Mr. Palmer's recommendation and just go back to the original recommendation is that we are provided with written criteria. Or that OAH provides written criteria for when it refuses to provide in person mediations and hearings.

This is a little bit confusing for non-attorneys. And so, I appreciate the different perspectives here.

I certainly don't want the recommendation to be counter to the law. So, I think that going back to the original recommendation would be appropriate.

DIVISION CHIEF CASTILLO:

Please note, there could be two. One could be the one Mr. Palmer -- and there can be two that OAH would have to respond to approve by the Committee.

If the Committee approves Ms. O'Maley's, OAH would have to respond to it. And if the Committee approves Mr. Palmer's, OAH would respond to that also.

They are not mutually exclusive. They don't cancel each other out that if we respond to one we don't respond to the other.

MS. KAMM:

So, we are actually considering recommendations from the Committee that are not on the agenda. That is what you're saying?

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DIVISION CHIEF CASTILLO:

No, no, I'm saying that they are on the -- your recommendation is a topic. And it has happened in the past that there's -- after discussion there's been -- the recommendation has been adjusted based on the discussions that have happened, so.

MS. KAMM:

Correct. However, what you're saying now is not just correcting or adjusting the one recommendation. Now you're saying that you are allowing multiple recommendations on that one topic. So, am I understanding that correctly?

DIVISION CHIEF CASTILLO:

It can be for this item. And we've done -- as I've indicated, we've done that in the past that's related to the agenda item.

MS. KAMM:

And to my -- to my recollection we have only amended the recommendation. We have not been allowed to spawn multiple recommendations just based on a topic.

But if that is a new rule or a rule that I've missed previously, then thank you for that. Because I think that that opens it up to many more recommendations for each stated recommendation on the agenda. So, I appreciate that, thank you.

DIVISION CHIEF CASTILLO:

Okay. Ms. O'Maley?

MS. O'MALEY:

Is it possible that we combine both to be that we recommend that the Parent determine the medium for mediation or due process?

And that if denied -- and that OAH provide criteria when it denies for -- the criteria for when it determine -- when it denies a Parent's request? That we get the criteria in advance that OAH uses when it denies a Parent's request?

DIVISION CHIEF CASTILLO:

I think that ties into what Mr. Palmer is requesting.

MS. O'MALEY:

I was just seeing if we could put it as one recommendation. But I will do two. It's whatever the Committee wants.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Yeah, just in case I muddled the waters a little bit, the California Government Code Section, or sorry, Code of Regulations Title 5, Section 3082, is where Judge Castillo was referring to earlier.

Which specifically excludes a difference -- Government Code Section 11440.30, which I was referencing before that, that allows under the APA, a party to object to a virtual type of hearing or electronic hearing, however it's referred to in the Code Section.

The authority to create those regulations under the Ed Code is given to the California Department of Education. Who's created that section which explicitly excludes a Parent or School District's right to object to conducting a hearing in a certain format.

And so, again, full circle, I think the way the regulatory scheme is set up, OAH has the authority to make this determination. I think what people are struggling with is understanding what the criteria is.

My concern, even with the way it's currently worded is, I've been on this Committee for several rounds. And we've asked for this before. And that's where the case by case basis part comes from.

So, perhaps OAH providing orders in which publicly or on their website, in which they have granted an in person hearing, will help us better understand what the case by case criteria is.

And that's a suggestion for the Committee to think about or consider.

DIVISION CHIEF CASTILLO:

Mr. Padron.

MR. PADRON:

Yes, I just wanted to add that it's become more and more clear, or clearer, that OAH has the final say. And they can always say that it's denied for in person because based on the head cold.

And then Mr. Shaw clearly explained the reasoning that OAH would provide.

And I remember, if I may, I remember being invited to a rule making meeting in Oakland with OAH. And there was a discussion about the issue of striking a Judge.

And the reasoning behind, they were asking us to strike a Judge within time, is that OAH can assemble another Judge to drive or fly to the place where the Judge -- where that hearing was going to be held.

I think that that -- it's becoming clear to me that OAH is attempting to eliminate a lot of those issues by just saying we're going to continue with having the sessions, either mediation or hearing, having them be videoconference.

So, you know, the Committee, we spent an hour, almost an hour and 15 minutes, on this. And it's very clear that Mr. Shaw has put the finger on how OAH is going to respond.

I mean, we're, we've been doing this for a while guys. Let's move on to other matters. Because I think that they're even thinking about how to respond now. And it's going to be very clear that they're allowed under an Ed Code, or Government Code, or a Code of Regulations. There's so many that they're going to say it's just way easier for us.

So, they're going to disregard the Parent's rights here. That's my bottom line. Thank you.

MS. YAZIGI:

Judge Castillo?

DIVISION CHIEF CASTILLO:

If I may -- if I may interject at this point to describe, for the sake of clarity for a moment there it sounded like both pending recommendations may have -- we're going to be melted into one?

It sounds like there's still two separate recommendations. So, my humble suggestion would be to call for the vote for the first one that has been seconded and move on to the second. Just so that members are clear as to what is being discussed.

DIVISION CHIEF CASTILLO:

Okay. Public comment -- Ms. O'Maley and then I'm going to go to public comment. And then take votes.

MS. O'MALEY:

(Inaudible) to represent the public and the Parents and those that are affected by these regulations.

So, recommending something that's appropriate for our constituencies is our job.

DIVISION CHIEF CASTILLO:

Thank you. Going to comments from members of the public. Adriana Delasantos, can you please invite her in?

MS. DELASANTOS:

Yes, thank you. Hello again. I just -- is it possible to get clarification. Will this recommendation include language that the Parents or Guardians will be informed of

their options? Just because we may have options. We may not know that they're there. So, yes, that's just my question. And I don't know if I already -- if I missed the answer, if it was already discussed. Thank you.

DIVISION CHIEF CASTILLO:

It has not been discussed. But I can state that it is the right of Parent or anybody to make a motion for an in person hearing is discussed in our scheduling order.

Any other public comments? Any email comments?

MS. KAMM:

I actually have a -- I have a question. I thought we already took public comments on this item. So, what exactly are we taking public comments on? I'm getting a little confused here with the order on the agenda.

DIVISION CHIEF CASTILLO:

We're taking public comments on either one of the -- people can comment on the proposed recommendations that Ms. Kamm (sic) and Mr. Palmer have put forwarded that have been seconded.

Are there any email comments on the proposed recommendations by Ms. -- by Ms. O'Maley and Mr. Palmer?

MS. TROTTER:

No email comments received.

DIVISION CHIEF CASTILLO:

We're going to take a vote. Judge Yazigi, could you please read Ms. O'Maley's recommendation?

MS. YAZIGI:

Certainly, that the medium of mediation or due process hearing be at the discretion of the Parent. And that said proceedings be held in person upon Parent request.

DIVISION CHIEF CASTILLO:

Mr. Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Mr. Padron is yes. April McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

April McCoy is yes. Daniel Shaw?

MR. SHAW:

No.

DIVISION CHIEF CASTILLO:

Daniel Shaw is no. David Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

David Molina is yes. Eugene Mosqueda?

MR. MOSQUEDA:

No.

DIVISION CHIEF CASTILLO:

Eugene Mosqueda is no. Jennifer Adams?

MS. ADAMS:

No.

DIVISION CHIEF CASTILLO:

No. For Northern California, that's three I's, three no's.

For Southern California, David Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

David Palmer is yes. Debra Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Is that a yes, Ms. Kamm?

MS. KAMM:

Yes, that was a yes.

DIVISION CHIEF CASTILLO:

That was, thank you very much. A yes from Debra Kamm. Justin Sherrill?

MR. SHERRILL:

No.

DIVISION CHIEF CASTILLO:

A no from Justin Sherrill. Kimberly O'Maley?

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

A yes from Kimberly O'Maley. Lauren Ashley-Mendez?

MS. ASHLEY-MENDEZ:

No.

DIVISION CHIEF CASTILLO:

No from Lauren Ashley-Mendez. Suzanne Snowden?

MS. SNOWDEN:

No.

DIVISION CHIEF CASTILLO:

No from Suzanne Snowden. That is three I's, three no's, and from Northern -- from Southern California.

And Ms. O'Maley's proposed recommendation does not pass from either Committee. So, OAH will not be addressing that proposed recommendation.

Judge Yazigi, could you please state for the Committee and members of the public Mr. Palmer's proposed recommendation?

MS. YAZIGI:

Certainly, I have the Palmer recommendation as reviving member Kamm's recommendation. Which was that OAH provide written criteria being used to consider requests for in person mediations and hearings on a case by case basis.

DIVISION CHIEF CASTILLO:

Member Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Yes by Member Padron. Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Yes by Member McCoy. Member Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

Yes by Member Shaw. Member Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Yes by Member Molina. Member Mosqueda?

MR. MOSQUEDA:

No.

DIVISION CHIEF CASTILLO:

No?

MR. MOSQUEDA:

Correct, no.

DIVISION CHIEF CASTILLO:

No from Member Mosqueda. Member Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

Yes by Member Adams. So, that is five I's and one no for Northern California.

From Southern California, Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Yes for Mr. Palmer is yes. Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Is that a yes, Member Kamm?

MS. KAMM:

Yes, that was a yes.

DIVISION CHIEF CASTILLO:

Okay. Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Yes from Member Sherrill. Member O'Maley?

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

A yes from Member O'Maley. Member Ashley-Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Yes from Member Ashley-Mendez. Member Snowden?

MS. SNOWDEN:

Yes.

DIVISION CHIEF CASTILLO:

That is yes for Member Snowden. That is six I's from Southern California. So, Member Palmer's recommendation carries both Committees. And OAH will respond to that.

With that, we're going to take a 10 minute break. We'll be back a little after 11:00 a.m. with agenda item five from Ms. Kamm.

So, you may stop the recording. And we'll be back in 10 minutes.

(Off the Record)

DIVISION CHIEF CASTILLO:

We are back -- I need to block myself of this Committee hearing. I want to say we're back on the record and start reading a Case Number. But that is not it.

We're back on the Advisory Committee meeting. And we're on agenda item five for Ms. Kamm, which I'll read.

Recommendation that a contact person be named for the OAH Advisory Committee members rather than a generic government email address. Ms. Kamm.

MS. KAMM:

Well, I think you just read it. I think it's pretty self-explanatory. So, hopefully we can make up some time here. I think that this is pretty simple and self-explanatory.

DIVISION CHIEF CASTILLO:

Okay. Is there a particular reason why I think with the assist of members, why you would want a contact person be named versus a generic OAH email address?

MS. KAMM:

I'm sorry, are you asking me why I would want that?

DIVISION CHIEF CASTILLO:

Yes.

(This space is intentionally left blank. Text continues on the following page.)

MS. KAMM:

Number one, I believe it's just common courtesy when OAH is very well aware of who is contacting them. As you know, that there is great fear of retaliation by Parents from OAH and the School Districts.

And I think that it is just a professional thing to do, to have the name of the person that you are corresponding with. It's just common courtesy and common communications.

DIVISION CHIEF CASTILLO:

Okay. Any other comments from the Committee? Mr. Molina? You're on mute, Mr. --

MR. MOLINA:

Job is it -- I'm sorry. Is that better, can you --

DIVISION CHIEF CASTILLO:

Yes.

MR. MOLINA:

Is it just one person's job? Or is this like a group that manages these requests?

(This space is intentionally left blank. Text continues on the following page.)

DIVISION CHIEF CASTILLO:

It is a group. We have -- they introduce the four individuals that are our Special Operations staff. And one of the things that they are tasked with is help managing the Advisory Committee meetings, like the Zoom meetings, issuing the agendas, comments, et cetera, so.

Mr. Palmer?

MR. PALMER:

Yeah, I appreciate the recommendation. I think, you know, there's this shroud of mystery when we just start emailing a, you know, a box. And we don't know who's behind that.

So, I think, you know, as a common courtesy and to know who are we talking to, who are we dealing with. And, you know, it goes to the issue of transparency in the process.

DIVISION CHIEF CASTILLO:

Thank you. Member Kamm?

MS. KAMM:

I believe that you just mentioned that there were four different OAH staff members who are responsible for handling the Advisory Committee? So, could you please provide those names?

DIVISION CHIEF CASTILLO:

Maurene Trotter, Staff Service Manager; Anna Brown, Trinity Dorantis, and Laurie Crom. And also Staff Service Manager Stephanie Kent.

MS. KAMM:

And I assume yourself as well as part of making the decisions regarding this Advisory Committee?

DIVISION CHIEF CASTILLO:

I'm going to be honest. I do not have access to that email address that you -- that's in your recommendation.

MS. KAMM:

Okay. All right, thank you.

DIVISION CHIEF CASTILLO:

Any other public comment? Comments from members of the public?

MS. TROTTER:

No --

DIVISION CHIEF CASTILLO:

Do we have any --

MS. TROTTER:

-- oh, no email comments.

DIVISION CHIEF CASTILLO:

Thank you. Ms. Kamm, would you like to go with this recommendation as written in the agenda?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Can you please read it Judge Yazigi?

MS. YAZIGI:

Certainly, that a contact person be named for OAH Advisory Committee members rather than the generic OAH op email address.

DIVISION CHIEF CASTILLO:

Is there any second to this?

MR. MOLINA:

I'll second it.

DIVISION CHIEF CASTILLO:

Mr. Molina? Or is that Mr. Palmer?

MR. MOLINA:

Correct.

DIVISION CHIEF CASTILLO:

That was Mr. Molina?

MR. MOLINA:

Molina.

DIVISION CHIEF CASTILLO:

Okay, that was a second for Mr. Molina. Okay. Any other further discussion from the Committee as to this proposed recommendation from Member Kamm?

Seeing none, any public comment? Seeing none, any email?

MS. TROTTER:

None.

DIVISION CHIEF CASTILLO:

Okay.

MS. TROTTER:

No email comments.

(This space is intentionally left blank. Text continues on the following page.)

DIVISION CHIEF CASTILLO:

Judge Yazigi, could you please read one more time, the recommendation? And we'll take a vote.

MS. YAZIGI:

Sure. That a contact person be named for OAH Advisory Committee members rather than the generic OAH special education ops email address.

DIVISION CHIEF CASTILLO:

Okay. Member Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Member Shaw?

MR. SHAW:

I don't really have a position on this one.

DIVISION CHIEF CASTILLO:

I will take that as abstain. Member Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Member Mosqueda?

MR. MOSQUEDA:

Abstain.

DIVISION CHIEF CASTILLO:

Member Adams?

MS. ADAMS:

Abstain.

DIVISION CHIEF CASTILLO:

Okay. That is three I's and 3 abstentions. For Southern California. Mr. Palmer --
Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Member Sherrill?

MR. SHERRILL:

Abstain.

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

Member Ashley-Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Member Snowden?

MS. SNOWDEN:

Abstain.

DIVISION CHIEF CASTILLO:

Okay. We have four I's and two abstentions. It is passed to Southern California Committee. And OAH will respond to this recommendation.

Agenda item six. Recommendation that OAH provide a written description of the process by which OAH Advisory Committee recommendations are accepted or rejected, including the specific staff involved and the criteria used.

Or provide the specific facts, showing that the public interest and not disclosing the process outweighs the public interest of disclosure of the process. This is from Member Palmer.

MR. PALMER:

Yes, we've heard already this morning some of the issues with, you know, having agenda items that are recommended that don't make the agenda. And so, you know, it just -- in the spirit of transparency that we understand the process by which those decisions are made.

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DIVISION CHIEF CASTILLO:

Any comments from members of the Committee on agenda item six? Seeing none, any comments from the public on agenda item six?

UNIDENTIFIED FEMALE VOICE:

Judge Castillo, did we get a second to discuss agenda item number six?

DIVISION CHIEF CASTILLO:

No, I have -- this is just the public comment on that. I have not taken a recommendation yet.

UNIDENTIFIED FEMALE VOICE:

Okay, thank you.

DIVISION CHIEF CASTILLO:

So, just on the agenda item six, is there any public comment? Any emails on agenda item six?

MS. TROTTER:

No email comments.

DIVISION CHIEF CASTILLO:

Okay. Mr. Palmer, would you like to make a recommendation for this Committee to vote on this?

MR. PALMER:

Well, yeah, I'd like to go with the recommendation made. But I also would just like to implore my fellow Committee members that if you don't have comments or questions that that means that you should be able to make a vote and not abstain.

If there's something that's causing you to abstain, then you should ask for clarification or speak about that. We are committed to being here and being a part of this process. And to just not engage is, you know, against the purpose of this Committee.

So, if you have an issue, please ask it and not just abstain without any comment or question.

DIVISION CHIEF CASTILLO:

Okay. So, Mr. Palmer, is the recommendation as in the agenda item that you'd like to put forward?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Is there a second to that? Ms. O'Maley -- or Mr. Padron?

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MR. PADRON:

Yes, I actually have a question. But you weren't able to identify my raised hand.

I would like to know if Mr. Palmer can maybe clarify a little bit or cut some of it out. Because right in the middle where it says or provide the specific facts.

So, is there any way, Mr. Palmer, that we can kind of make it more specific in a little generalized term?

MR. PALMER:

Well, I'm certainly open to suggestion. I guess I'm just going along, you know, the guidelines that if, you know, if there's a -- as there are public acts request.

If there's a reason that these processes not be disclosed or the information not be disclosed that, you know, the District or the Agency provides reason why, you know, that usurps the public interest in it. So, that's what I was just getting at here.

MR. PADRON:

Okay. Can I -- Mr. Castillo, can I continue?

DIVISION CHIEF CASTILLO:

Well, let's -- I want to take whether or not there is a second to Mr. -- Member Palmer's recommendation. And if there is, then we can have further discussion on this before we take a vote.

Is there a second? Ms. O'Maley, are you seconding?

MS. O'MALEY:

I second it.

DIVISION CHIEF CASTILLO:

Okay. Mr. Padron, your -- what is your question regarding the proposed recommendation?

MR. PADRON:

Yes, I agree with it because we're Committee members. And again, Mr. Palmer very clearly mentioned that abstaining is just kind of being neutral to the process.

But we're here to kind of make the process a little better in terms of for Parents and people that decide to use the Office of Administrative Hearings in filing a due process complaint or mediation only.

But I felt that I submitted a question. And it was pertaining to the same case that I had submitted a previous question for. But it wasn't included.

So, I'm kind of, you know, I'm with Mr. Palmer in the sense of I would like to know why it wasn't included. Or, like I said, Mr. Castillo, in the past maybe it's been discussed in the past and not aware of it.

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So, yes, I would like to -- it's already been seconded. But I agree with Mr. Castillo (sic). We need to know what is the process so that we don't ask those questions that are going to be thrown out, possibly, if we know in advance what the criteria is for asking a good question that's going to make it on the list or the agenda.

So, that's my take on that.

DIVISION CHIEF CASTILLO:

Okay, thank you. Member O'Maley? You're talking, Ms. O'Maley, but you're muted.

MS. O'MALEY:

I really just thing the -- I think the way the recommendation is worded is appropriate. Because it says that if you're not going to disclose it you need to show why the public interest is outweighed -- the public interest in knowing is outweighed by some OAH justification.

I think it's a good recommendation. And I fully endorse it.

DIVISION CHIEF CASTILLO:

Thank you. Member Snowden?

MS. SNOWDEN:

I guess I had a question as to what part of the process. Is this before we have the meeting where recommendations for the agenda are set forth?

Is that what we're talking about? Like you'll make a certain recommendation that -- I am not sure what's a big heated issue. And then it's not included in the agenda? Is that what you're talking about? Or is it after that the OAH accepts or rejects the recommendation?

DIVISION CHIEF CASTILLO:

Mr. Palmer?

MR. PALMER:

Well, I know that, you know, each Division has a chairperson that collects the agenda recommended items for the agenda. And they submit them.

I know that both times I've been involved I've submitted recommendations. And then when the agenda is send out they're not on the agenda. And that's the first I'm hearing about it.

So, I would like to understand, and that's the purpose of my recommendation, is what's that process? Like, you know, I put in an agenda item. And I come to -- the day before the meeting or a week before the meeting and find out that it's not on the agenda. And I don't understand how that happened or, you know, what was the process.

And again, if it's because it's been a past thing, I've only -- this is my second time involved. I don't know the history of this Committee. And so, I think that just as -- if that's the reason, that we be given a reason.

If there's -- we just need to understand the process that's, again, that shroud of mystery around everything that's happening. And it really just needs to be a transparent, clear process.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes, I totally agree. I do agree with the wording here. And I think that the Court issue here is that this Committee is just running blind.

We have no bylaws. There's nothing in the IDEA or the inner-agency agreement with the CDE that I can find that gives OAH the authority to censor what the Advisory Committee members request be put on the agenda. And yet that's happening at every meeting now.

OAH is a vendor of the CDE and is a contractor. And I don't believe that OAH has that authority or should have that authority. And we also have absolutely no idea what the rules or parameters are, which seem to be ever changing.

There's nothing written down anywhere about this Advisory Committee or very little about the process. And I think that that's really what we're all struggling with here is that we have unnamed people responding to emails. We have unnamed people making decisions based on unknown criteria.

This is not how public meetings are supposed to work. We have absolutely, you know, lack of transparency. Everything is in a cloak of secrecy with OAH. And quite honestly, I think that this is leading to a huge lack of confidence by the public and the OAH.

And I think that the OAH would actually do itself a service by working with us to create bylaws so that this entire process is transparent.

Otherwise, it just looks like you guys are like, you know, throwing darts at the wall here and changing the rules constantly.

So, I am in full support of this. And I really hope that OAH agrees. Otherwise, this whole process looks very adversarial for a vendor who is supposed to be providing neutral and fair mediations and hearings

And I don't know how the public can have any confidence that OAH is acting in a neutral manner when we can't even have very basic transparency here with a public meeting. Thank you.

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

I fully endorse what Member Kamm just said. And I also want to remind the Committee that at the June meeting, OAH inserted its own agenda items and an agenda item we weren't -- neither Committee member was aware of, in place of the agenda items that were recommended from both Northern and Southern California members.

And that was a big concern then. So, I think, you know, that needs to be clarified. Because in my understanding, this Committee is to make recommendations to the OAH. And, as she said, a vendored, contracted entity to the California Department of Education.

So, I think it's important that this be -- that this proposal and this recommendation be passed. Because it's essential we understand exactly what is the process. And why a number of items just get unilaterally dropped off and unilaterally added on by OAH's determination that was their recommendation.

I didn't even know that they could put items on the agenda. Because I thought it came from the Committee members.

So, I think this is essential that we pass this.

DIVISION CHIEF CASTILLO:

Mr. Palmer?

MR. PALMER:

Yes, I just wanted to add that not only did OAH insert agenda items, they prioritized them last meeting in June.

MS. O'MALEY:

Yeah.

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MR. PALMER:

Meaning that those took -- those went first. And we ran out of time. And even some of those agenda items that made the agenda were not discussed. And we were required to resubmit them if we so desired for this meeting.

So, you know, again, that is the problem. And prior to OAH being the vendor who was, you know, doing due process things. Decisions were roughly 50/50, Parents and Districts.

Since OAH has been involved, Parents rarely ever prevail. It's around 10-percent, I believe. So, again, to what Ms. Kamm is saying, you know, the public faith and belief that this is a transparent and open process is greatly diminished by the basic denial of understanding the procedures clearly.

And us, as the members of the public, myself I'm a Parent, that's who I represent here on this Committee, that we are just shut out of the process and, you know, not allowed even to understand the process.

So, that is why I'm bringing for this recommendation is that, you know, we at least need to understand the process as a foundation.

DIVISION CHIEF CASTILLO:

Thank you, Mr. Palmer. Member Snowden?

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MS. SNOWDEN:

Does the OAH submit proposed agenda items anywhere? What was proposed by the two sections? Is that posted anywhere where the Committee has made recommendations to discuss at the meeting?

And is there a way to list the proposed agenda items that were proposed by the Committee?

DIVISION CHIEF CASTILLO:

Whoever proposes an agenda item, it states that who proposed it. So, like this one states item from Southern California Member Palmer.

If an item is proposed by OAH it will state by OAH.

MS. SNOWDEN:

What I'm hearing, though, is that there's an issue with respect to a Committee member or the Chairs submitting a request to be addressed at the Advisory Committee meeting.

And those aren't getting included onto the agenda, if I'm understanding the issue. Is there anywhere where OAH lists all the proposed agenda items?

In other words, if Ms. Kamm is saying that she's made recommendations that didn't get included. I'm not sure, Northern California, I've just listened to Ms. Kamm, where do those go?

Like is there a proposed item agenda? Where it's the Advisory Committee members proposed agenda Items. Is that listed anywhere? Or does OAH just take the recommendations and exclude certain ones and then submit the agenda that we have here today?

DIVISION CHIEF CASTILLO:

OAH receives the proposed recommendations from -- we have the Chairs would be Member Kamm and Member Molina. They forward what the other Committee members are requesting.

And then OAH publishes the decision, I mean, the agenda with the items that will be discussed at meeting.

MS. SNOWDEN:

So, are there items that are excluded from the items that will be discussed at the meeting?

DIVISION CHIEF CASTILLO:

I think Member Palmer and Member Kamm have indicated that they have suggested agenda items that OAH did not put on the agenda.

MS. SNOWDEN:

Is this factually correct?

DIVISION CHIEF CASTILLO:

Yes.

MS. SNOWDEN:

Okay.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. SNOWDEN:

Thank you.

MS. KAMM:

Well, I appreciate your honesty in admitting that some of the proposed agenda items have been just summarily dropped with no explanation.

But that really does get to the heart of the issue here as to why OAH is acting in an adversarial manner to an Advisory Committee. I don't understand that.

And we have -- several of us have asked over and over again as to what the process is? Why you are making those decisions? Who is making those decisions? And there's obviously just a lack of sincere response.

So, I think that that is obviously what has prompted this recommendation, as well as others. But I do want to reiterate that the secrecy and lack of transparency is really hurting the reputation of OAH.

I don't know how Parents can trust an organization who is so not transparent. But now that you have admitted that that is factual, that you have completely omitted proposed items from the Committee members who are here.

And I would like to emphasize, many of us are here, we're Parents, and we're taking time out of our day. Some of us have taken time out of work. We're not being paid to be here as OAH ALJs are.

You are all being paid with public dollars to be here. Most of us are taking time out of our day. And we're volunteering to be here.

And so, I would really -- it would really help all of us to really understand, it's a very simple question, why were those items omitted? And what is that process?

DIVISION CHIEF CASTILLO:

Member Mendez?

MS. ASHLEY-MENDEZ:

Yes, I just wanted to add, as it's helpful for the Committee in considering this recommendation, that I also have had four of my recommendations not be added to the agenda. So, it's not just the ones that have suggested it.

And so, I would be interested in knowing the procedures as to how OAH gets to decide which recommendations are added to the agenda.

DIVISION CHIEF CASTILLO:

Okay. Member Snowden?

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MS. SNOWDEN:

Yeah, with respect to the recommendation number six, my only concern is the addition of that specific fact showing that the public interest and not disclosing outweighs the public interest of disclosing.

I'm not so sure that that's as important as what were the proposed agenda items being listed? And what were the ultimate agenda items listed? So that this Committee has a full understanding of what was proposed to be discussed. And what ended up being on the agenda. That's just my addition.

DIVISION CHIEF CASTILLO:

Would you like to make any changes, Member Palmer?

MR. PALMER:

Well, I just wanted to ask a question of clarification from members noted. Are you saying that with that addition I'm opening the door for them not to respond? Is that what you're concerned about?

MS. SNOWDEN:

Yes, that it really -- it has more to do with Brown Act and what items were suggested and proposed as part of stakeholders. And what items ended up.

So, I'm not so sure that it has ultimately to do with the public interest. I mean, ultimately it does. But it should be what items were proposed and what items ended up on the agenda.

That is the -- that's the issue at heart. And that's part of the Brown Act.

MR. PALMER:

All right, thank you for the clarification. I see how there's that question. So, I'm going to pause if I may, Mr. Castillo, as far as your question to me. I'd like to hear what the others have to say first.

DIVISION CHIEF CASTILLO:

Member Padron?

MR. PADRON:

I think Ms. Snowden brings up a really good point. She indicated that she is new as well. And I'm -- this is my second meeting.

And I am very interested in knowing if there's a way that you could send, along with the agenda items, send the proposed questions -- or recommendations that did not make the list.

That would at least give us, or me as a member, a Committee member, how others -- members of the Committee also have their thought processes when it comes to OAH and the processes that OAH utilizes to be able to make it into a discussion, a full-fledged discussion in public concerning the matters that they deem -- OAH deems important.

And so, that to me, would open at least, you know, that shroud of secrecy that members are talking about. It would at least give me an idea as to -- because I know the question that I submitted and where possibly there would've been a discussion about that.

But I don't know the questions of others that have been submitted and what their thought processes are.

So, I would be very open to have a list of proposed and then a list of the ones that were -- that didn't make it. That's my thought.

DIVISION CHIEF CASTILLO:

Member Kamm? You're on mute.

MS. KAMM:

Thank you. If I'm reading this correctly, I think this discussion is actually morphed into two different areas.

I think that recommendation number six is referring to when we make a recommendation and we find out eight months later whether OAH is accepting it or rejecting it, what that process is.

But we're also talking about the process for even getting the Committee agenda items on the agenda. So, if I'm understanding this correctly, I think that perhaps there could be an addition to this recommendation that OAH provide a written description of the process by which OAH Advisory Committee proposed items are accepted or rejected. And how Advisory Committee recommendations are accepted or rejected.

DIVISION CHIEF CASTILLO:

Ms. Kamm, would you like to make a recommendation as to -- I think for clarity I'm just going to refer to it as proposed agenda items?

MS. KAMM:

Sure. Do you want me to restate it?

DIVISION CHIEF CASTILLO:

Yes, please. And I think --

MS. KAMM:

Okay.

DIVISION CHIEF CASTILLO:

-- I think for clarity is what you have discussed is that one is what -- after a vote that this Committee makes, like the last one, we can -- we issue our responses to proposed recommendations.

And that would be what Mr. Palmer -- we'll take that of Mr. Palmer's recommendation, which has been seconded. And the other one would be that you're talking about are the agenda items.

MS. KAMM:

Yes, or we can put both of them in one. Because I'm not quite sure what this one, when it says the Committee recommendations. I'm assuming that those were the recommendations that we voted on.

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So, I guess what I would propose is that there's a recommendation, but I guess I can make a separate one then. A recommendation that OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected.

DIVISION CHIEF CASTILLO:

Can you repeat that Judge Yazigi?

MS. YAZIGI:

Sure. So, are we approaching this in two separate recommendations then?

DIVISION CHIEF CASTILLO:

Yes.

MS. YAZIGI:

Okay.

DIVISION CHIEF CASTILLO:

This would be 6b.

MS. YAZIGI:

6b would be a recommendation by Member Kamm that OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected, including the specific staff involved in the criteria used.

Or provide the specific facts showing that the public interest in not disclosing the process outweighs the public interest of disclosure of the process.

Have I captured that correctly?

MS. KAMM:

Yes, thank you.

DIVISION CHIEF CASTILLO:

Is there a second to what I'm calling recommendation 6b? Mr. Padron?

MR. PADRON:

Yes, I second that.

DIVISION CHIEF CASTILLO:

Okay. Are there -- Mr. Shaw?

MR. SHAW:

So, what I'm hearing are two different issues. One has to do with the clarity of the decision making process. And the other has to do with proposed agenda items.

And building off of what Ms. Snowden was saying, they -- what probably makes sense is something along the lines of not just including what items were proposed for transparency purposes. But then what items would be included. And then why those items that weren't included are not going to be part of the agenda.

So, what I quickly wrote out was something along the lines of in OAH issued agendas for the Advisory Committee they shall include the recommendations -- all of the recommendation proposed, which proposals will be included in the Advisory Committee meeting. And why a proposed recommendation was not included in the agenda.

DIVISION CHIEF CASTILLO:

Okay.

MR. SHAW:

I'm not sure if that addresses the concern. But I'm just hearing two different things. One about transparency. And one about what's happening and why certain agenda items aren't being included.

DIVISION CHIEF CASTILLO:

Member Palmer?

MR. PALMER:

Is that our recommendation? I'm confused.

DIVISION CHIEF CASTILLO:

The question I was going to ask would be for Member Kamm, who's talking about the agenda item. Would you like to modify your proposed recommendation based on what Member Shaw has stated?

MR. PALMER:

No, well, this has kind of morphed into a couple of different issues. I do not wish to modify my recommendation. I do not want to give credence to the OAH adding agenda items.

This is the Special Education Advisory Committee. We are bringing forth recommendations to OAH. It is inappropriate for OAH to make recommendations to themselves. And to put items on the agenda is just inappropriate.

And it is out -- they're not -- you're not a voting member. You're not a part of the Committee. The OAH is not a part of this Committee. This is our Committee.

And so, I do not wish to give credence to OAH putting any agenda items on our Committee meeting. We make the recommendations. And those recommendations are put forth.

And I think we have to start at just simply understanding the process. OAH is doing -- is acting upon our recommendations. And I think what you said, Mr. Castillo, with all due respect was a Freudian slip when you said, you know, decision instead of recommendation. You know, I'm a therapist, that was the Freudian slip.

And this is a -- this is the problem. OAH is not transparent in their dealings with the public. And they can do what they want, again, behind this shroud of mystery.

And we need to clearly start at the beginning of understanding the process. Who is receiving our recommendations? Who is deciding what will be -- make the agenda and what will not?

So, I do not wish to give credence to OAH submitting anything. And I do not wish to make any changes to my recommendation.

DIVISION CHIEF CASTILLO:

Okay. Mr. Palmer, I think Ms. Kamm had expressed, and other members of the Committee had expressed confusion. Which is why there were two parts.

Is that -- is your part dealing with what goes on the agenda? Or is your part dealing with after what's been on the agenda there's a vote from the Committee and a recommendation for OAH to respond to? Are there two separate processes?

MR. PALMER:

My recommendation states that I would like a written description of the process by which OAH Advisory Committee recommendations are accepted or rejected.

Multiple members have stated that they have made recommendation agenda items that have not been accepted. We need to understand, as a starting point, what is that process?

So, that's my recommendation. I don't know that I can make it any more clear. We want to understand what is happening behind the scenes by which our recommendations are not making it on the agenda. And --

DIVISION CHIEF CASTILLO:

Mr. Palmer --

MR. PALMER:

-- I don't have a problem with Mr. Shaw's or Ms. Kamm's recommendation. But they're different than mine. And that's where I'm just saying, you know, as far as my recommendation, I want to first understand the process.

DIVISION CHIEF CASTILLO:

Mr. Palmer, members of the Committee have expressed confusion about your recommendation about -- that you want to vote on.

Is it the agenda items that are proposed? Or is it once there is an agenda, like we've done here today that we took a vote on and it is passed or --

MR. PALMER:

Is the agenda items --

DIVISION CHIEF CASTILLO:

-- agenda item -- that we have to -- then OAH has to make a response to? So, there are two -- there's two parts.

One is what goes on the agenda. Then the second part is after it's on the agenda and we have a meeting, it's voted upon and approved by the Committee. And OAH then responds to?

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MR. PALMER:

My apologies. Based on the discussion it seemed everybody was understanding that I'm talking about agenda items, recommendations that are submitted to our Chairperson that do not make it on the agenda. That is what I'm talking about.

DIVISION CHIEF CASTILLO:

Okay. Would you like to clarify? Or you can, I think that was what Ms. -- Member Kamm had put forward. Which is now 6b, which was talking about the agenda items.

Judge Yazigi, could you read 6b, please?

MS. YAZIGI:

Essentially it replaces the words -- word recommendations with proposed agenda items. So, starting from the top on recommendation 6b.

That OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected, including the specific staff involved and the criteria used.

Or provide the specific facts showing that the public interest in not disclosing the process outweighs the public interest of disclosure of the process.

MR. PALMER:

Yes, I am okay with exchanging the word recommendations with proposed agenda items. If that's -- is that how it was worded?

DIVISION CHIEF CASTILLO:

Yeah, so --

MS. YAZIGI:

Yes. Oh, sorry, just to clarify that's the only difference between Member Palmer's agenda item 6a and what you've been calling 6b.

It's just the word recommendations is replaced with proposed agenda items.

MR. PALMER:

I thought when 6b was originally proposed it included OAH decisions. And that's where I'm saying I do not wish to give credence to that in my recommendation.

So, as long as that's not -- I'm okay with switching out the word recommendations for proposed agenda items. That's what I'm okay with.

DIVISION CHIEF CASTILLO:

Okay.

MS. YAZIGI:

So, my question would be, is this a friendly amendment to Member Palmer's original recommendation? Or are we treating this as a different recommendation? You let me know how to proceed.

DIVISION CHIEF CASTILLO:

Okay. Mr. Palmer, the question is do you want to -- because we have 6a, which was what's on -- what you had put forward in the agenda. Then 6b, which is what Member Kamm has.

Would you want just to withdraw yours and go just forward with you and Member Kamm as a joint?

MR. PALMER:

I would like to hear 6b again.

MS. YAZIGI:

Okay, from the top. That OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected, including the specific staff involved and the criteria used.

Or provide the specific facts showing that the public interest in not disclosing the process outweighs the public interest of disclosure of the process.

MR. PALMER:

As read, yes, I would accept that.

DIVISION CHIEF CASTILLO:

Okay.

MS. KAMM:

And if you are changing my proposed item that I would like -- I would like to change my proposed item then.

DIVISION CHIEF CASTILLO:

We're not -- we're not changing it. We're just changing -- Mr. Palmer is agreeing to yours as his so that you're both --

MS. KAMM:

Well, but that was -- but that was based on my understanding that his recommendation was referring to the voted on recommendations where we get a decision eight months later.

So, I would like to propose a separate recommendation, since it has now been clarified that his actually is specifically relating to the proposed agenda items.

That is one area where we definitely need to know the process. Because it's not transparent at all. The second area where we need transparency is how OAH and who at OAH is making the decisions on whether to accept or reject our voted on recommendations during the meeting.

DIVISION CHIEF CASTILLO:

Would yours then be, I'm just -- recommendation that OAH provide a written description by the process by which OAH Advisory Committee recommendations that have been approved by the Committee are accepted or rejected. Including the specific staff involved and the criteria used.

Or provide the specific facts showing that the public interest and not disclosing the process outweighs the public interest of disclosure of the process?

MS. KAMM:

Yes, that works.

MS. YAZIGI:

So, Judge Castillo, would you mind repeating the term that you used for recommendation 6b?

DIVISION CHIEF CASTILLO:

Okay. Recommendation that OAH provide a written description of the process by which OAH Advisory Committee recommendations that have been approved by the Committee by vote are accepted or rejected. And the rest could be the same.

MS. YAZIGI:

Okay, thank you.

DIVISION CHIEF CASTILLO:

Did that capture it Ms. -- Member Kamm?

MS. KAMM:

Yes, I believe that that works. Thank you.

DIVISION CHIEF CASTILLO:

Okay. And please note, there will be a 6a for the agenda items going on and 6b, which would be after the vote, the agenda items that have been approved by the Committee for OAH to respond to. So, there not -- there'll be two answers for this.

Is there a second to Member Kamm's?

MR. PADRON:

I second --

DIVISION CHIEF CASTILLO:

Okay.

MR. PADRON:

--I second Member Kamm's proposed matter.

DIVISION CHIEF CASTILLO:

Okay. So, just for the sake of the Committee, I'm referred -- there'll be referred to as proposed agenda item and recommendation and the approved recommendation item. Member O'Maley?

MS. O'MALEY:

I'd like to say, I'm getting confused, and we're using a lot of time. And we're not going to get through the rest of our agenda.

I thought the purpose of the original recommendation was about proposed agenda items and understanding why OAH unilaterally drops recommendations made by either Northern or Southern California Chairpersons submitted to OAH.

And yet, a number of those recommendations made from the two North and South Committees don't end up on the agenda. And we want to know why? What process is used to -- for OAH to unilaterally exclude those? I thought that's what we were addressing.

DIVISION CHIEF CASTILLO:

Ms.--

MS. O'MALEY:

Are we now addressing a second one that says we want to know why you approve or is -- I'm just trying to understand the difference so that it's clear to everyone also listening in the public.

DIVISION CHIEF CASTILLO:

And --

MS. O'MALEY:

Is the second one by Member Kamm about decisions that are made in this Committee meetings and understanding why you either accept or reject those items that we vote on and approve?

I'm trying to understand the difference. Because really the beginning of this and the Committee number six was all about we submit proposed agenda items that we feel are important. And then OAH unilaterally decides which ones get on or get off. And OAH unilaterally decides to put its own on before ours.

And that's the process I think we need clarification and explanation of, number one. And that was the original number six.

So, are we adding a totally second one with Member Kamm's that's about explain why once we vote on -- let's say we approve items in Committee here and then OAH doesn't accept those, and they reject them. We want to understand why?

I'm trying to understand because --

DIVISION CHIEF CASTILLO:

Member O'Maley --

MS. O'MALEY:

-- they're two different things. So, I want --

DIVISION CHIEF CASTILLO:

-- I --

MS. O'MALEY:

-- to make sure I understand what we're voting on so that it's really clear. Because it's becoming confusing.

DIVISION CHIEF CASTILLO:

Your confusion is why there are two recommendations. The members of the Committee have expressed different readings of 6a as written, 6a, as written was taken from what Mr. Palmer had submitted.

And there had been confusion about whether or not this dealt with agenda items to be placed on -- proposed agenda items be placed on, because of the term recommendations.

Or after a vote, whether or not when OAH issues its response to the voted upon recommendations.

So, that's why there are two. One is dealing with proposed agenda items. And two will be dealing with OAH will respond to agenda items that have been voted and approved by this Committee --

MS. O'MALEY:

That's what I thought, okay.

DIVISION CHIEF CASTILLO:

-- and the process for that.

MS. O'MALEY:

Okay. I just wanted to make sure there was clarification.

DIVISION CHIEF CASTILLO:

All right.

MS. O'MALEY:

I think we should get it to a vote so we can proceed with the other issues.

DIVISION CHIEF CASTILLO:

Member Snowden?

MS. SNOWDEN:

Yes, I had one suggestion for Mr. Palmer. If there's any way you can include that the proposed agenda items that didn't make it onto the ultimate or the actual agenda somehow be disclosed. Either to the Committee or -- so that we know what items were proposed and what were ultimately excluded.

MR. PALMER:

I'm fine with that inclusion. I thought we were -- that was what Mr. Shaw had proposed. I thought that was a third one that we were doing.

So, if we're just sticking with two, I'm fine with adding that piece onto my recommendation.

MS. SNOWDEN:

Okay. Then I would second that.

DIVISION CHIEF CASTILLO:

One second. So, Mr. Palmer, for your agenda item, and I'll have Judge Yazigi read it in a moment. You would want to add to the end, and OAH to disclose to the members or to the public --

MR. PALMER:

Add to the proposal was that they -- it be a part of the agenda that the other proposed items. That's what I would -- I would agree with, is that other proposed items not included are identified on the agenda.

MR. PADRON:

If I may?

DIVISION CHIEF CASTILLO:

Member Padron?

MR. PADRON:

Yeah, maybe it would be easier if it's not included in the recommendation but if there's a directive to the Committee member that accumulates all the possible agenda items and sends them -- sends them to the Northern California members? And the Southern California person that gathers them, sends them by email to the Southern California members?

That way, everyone could see what each member is submitting. And then when the agenda comes out, that's when we know which ones were omitted. Is that a possibility?

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

I think all we just add --

DIVISION CHIEF CASTILLO:

You turned off your camera, Ms. O'Maley.

MS. O'MALEY:

Oh, whoops. Hit the wrong button, sorry.

DIVISION CHIEF CASTILLO:

It's okay.

MS. O'MALEY:

Description of the process by which OAH Advisory Committee recommendations are accepted or rejected and disclose all -- and disclose the specific proposed agenda items that were rejected. And then including the specific staff or something to that order.

DIVISION CHIEF CASTILLO:

Is that what you're looking for, Mr. Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Did you get that Judge Yazigi?

MS. YAZIGI:

All right, so for agenda 6 item -- for agenda item 6a I have, that OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected.

And disclose the specific proposed items that were rejected, including the specific staff involved in the criteria used. Or provide the specific facts showing that the public interest in not disclosing the process outweighs the public interest of disclosure of the process.

Have I captured the sentiment accurately?

MR. PALMER:

Yes, thank you, Ms. Yazigi.

DIVISION CHIEF CASTILLO:

Is there a second to this? Member Kamm?

MS. KAMM:

will second.

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DIVISION CHIEF CASTILLO:

Okay. Is there any further discussion on I'm going to be calling 6a and 6b?
Member Snowden?

MS. SNOWDEN:

Yes, I think what Mr. Shaw had stated was a little bit different than what Ms. Yazigi had indicated. Because I believe that he had mentioned that the items that were rejected be listed on the -- on the ultimate agenda.

But I was hoping that Mr. Shaw could read it again, since it's all kind of my --

DIVISION CHIEF CASTILLO:

I affirm with what Ms. -- asking about. Because we had another discussion about what Ms. O'Maley had stated.

So, the question to Member Palmer is do you want what Mr. Shaw had stated or what Member O'Maley had stated for your recommendation?

MR. PALMER:

I would prefer that they be on -- the rejected proposed items be on the agenda so that the public also knows what they were.

But I also, I mean, didn't remember what Mr. Shaw had said. So, I was hoping that he would interject as Ms. Snowden has requested.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Sure, I can read it back again. What I wrote was each -- oops, sorry, wrong one. Let me find it.

That OAH's issued agendas for the Advisory Committee shall include all the recommendations proposed by Committee members. Which proposals will be included in the regular Advisory Committee meeting. And why a proposed recommendation was not included in the agenda.

DIVISION CHIEF CASTILLO:

Do you want that instead of what Mr. Palmer had recommended? Or some -- we're going to spend time modifying. And I think eventually we have to figure out what's going on so we can get something forward for a vote.

MR. SHAW:

Yeah, so I hear --

DIVISION CHIEF CASTILLO:

This is a matter for the Committee to decide. And this is your Committee. But eventually agenda items need to be discussed and then going -- because we can keep going on.

MR. SHAW:

My understanding of Mr. Palmer's recommendation has to do with transparency of the process with respect to proposed agenda items.

And then the next recommendation had to do with transparency with respect to the process of items that were either accepted or, in particular, rejected.

And then, I think what I was suggesting was a little different. Because I was a little confused about the initial proposal. I don't know if that helps clarify anything.

DIVISION CHIEF CASTILLO:

Mr. Palmer, do you want to make a change or just -- and if so, what would be your change?

MS. O'MALEY:

I've got a suggestion.

DIVISION CHIEF CASTILLO:

Yes.

MS. O'MALEY:

I was going to say, as I said, and identify those proposed agenda items that were rejected be included on each meeting agenda. Or be attached to each meeting agenda. Does that --

MR. SHAW:

Yes, that --

MS. O'MALEY:

Okay.

MR. SHAW:

-- is the intent that I would like.

MS. O'MALEY:

So, where we said and identify those proposed agenda items that were rejected be included on each -- be attached to each meeting's agenda. Does that work?

MR. SHAW:

Yes, it works for me.

MS. O'MALEY:

Ms. Kamm, does that work?

DIVISION CHIEF CASTILLO:

I have to make sure that Judge Yazigi has that.

MS. YAZIGI:

What I have, I can include the word attached. But what I have is that OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected.

And also disclose the specific proposed items that were rejected on the agenda.
No, okay?

MR. PALMER:

Yes.

MS. YAZIGI:

All right, so I hear a yes from Mr. Palmer, okay.

MS. O'MALEY:

And identify those proposed agenda items that were rejected be included on each meeting's agenda, that were rejected by OAH. And identify those proposed items that were rejected by OAH be included on each meeting's agenda.

DIVISION CHIEF CASTILLO:

Is that what you want, Mr. Palmer, added?

MR. PALMER:

I'm sorry --

DIVISION CHIEF CASTILLO:

Or do you think what Judge Yazigi --

MR. PALMER:

-- it is hard to --

DIVISION CHIEF CASTILLO:

-- had read is sufficient?

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MR. PALMER:

-- it is hard to process what's being read without being able to see it. If Ms. Yazigi could read it again as she has it, I will say yay or nay.

DIVISION CHIEF CASTILLO:

Okay.

MS. YAZIGI:

All right, so the way I have it -- that I had it written. And this does not reflect Member O'Maley's most recent comment is that OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected. And also disclose the specific proposed items that were rejected on the agenda.

MR. PALMER:

Okay.

MS. YAZIGI:

And then the remainder --

MR. PALMER:

Yeah --

MS. YAZIGI:

-- there's more --

MR. PALMER:

-- the remainder stay the same. okay.

MS. YAZIGI:

-- but it's staying -- yeah.

MR. PALMER:

Yes, I am okay with as you've read it, thank you.

MS. YAZIGI:

Okay.

DIVISION CHIEF CASTILLO:

Thank you. Is there a second to that? Mr. Molina, can you go on the record?
Can you unmute yourself, Mr. Molina? You're still on mute. We can't hear you,
Mr. Molina.

MR. MOLINA:

Molina seconds that.

DIVISION CHIEF CASTILLO:

Thank you. Sorry for being technical. Because we just need it on the transcript to
comply with the Open Meetings Act. Okay, there is a second.

I'm going to move to comments by members of the public. Are there any comments from members of the public regarding recommendation 6a and 6b?

Seeing none, any email comments on 6a or 6b?

MS. TROTTER:

No email comments.

DIVISION CHIEF CASTILLO:

Okay. We'll take a vote. For Judge Yazigi, could you please read 6a?

MS. YAZIGI:

That OAH provide a written description of the process by which OAH Advisory Committee proposed agenda items are accepted or rejected.

And also disclose the specific proposed items that were rejected on the agenda, including the specific staff involved and the criteria used.

Or provide the specific facts showing that the public interest in not disclosing the process outweighs the public interest of disclosure of the process.

DIVISION CHIEF CASTILLO:

Okay, we'll vote on proposed recommendation 6a. Member Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Member Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

Member Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Member Mosqueda?

MR. MOSQUEDA:

Yes.

DIVISION CHIEF CASTILLO:

Member Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

That is six I's in Northern California.

Southern California, Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

Member Ashley-Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Member Snowden?

MS. SNOWDEN:

Yes.

DIVISION CHIEF CASTILLO:

That is six I's in Southern California, 6b -- I mean 6a has passed. OAH will issue a response to that proposed recommendation.

For 6b, Judge Yazigi, could you please read that back?

(This space is intentionally left blank. Text continues on the following page.)

MS. YAZIGI:

That OAH provide a written description of the process by which OAH Advisory Committee recommendation -- oh, yes, I apologize. I'll start from the beginning.

That OAH provide a written description of the process by which OAH Advisory Committee recommendations that have been approved by the Committee by vote are accepted or rejected, including the specific staff involved and the criteria used.

Or provide the specific facts showing that the public interest in not disclosing the process outweighs the public interest of disclosure of the process.

DIVISION CHIEF CASTILLO:

On proposed recommendation 6b. Member Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Member Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

Member Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Member Mosqueda?

MR. MOSQUEDA:

Yes.

DIVISION CHIEF CASTILLO:

Member Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

Northern California six I's.

Southern California, Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Was that a yes, Ms. -- Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

Member Ashley-Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Member Snowden?

MS. SNOWDEN:

Yes.

DIVISION CHIEF CASTILLO:

That is six yes from Southern California. And that is passed.

I need to ask the interpreter, do you need a break? Okay. We'll take a 10-minute break for the interpreter. And we'll be back a little after 12:20 p.m. Thank you.

(Off the Record)

DIVISION CHIEF CASTILLO:

Okay. We are back, and we're with agenda items 7a and 7b. For time sake, Member Mendez and Member Shaw, would you like these be considered together?

MS. ASHLEY-MENDEZ:

Yes, Your Honor.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

That's fine, yes.

DIVISION CHIEF CASTILLO:

Okay. 7a is that OAH publish each ALJ's procedures for due process hearing on the OAH website per Member Ashley-Mendez.

B was each ALJ shall create its own standing order which specifies how the ALJ will deal with witnesses, evidence, issues for hearing, and other issues related to the due process proceeding.

This will be similar to how each State or Federal Court Judge has its own standing orders specific to their courtroom. And that's from Member Shaw.

Member Ashley-Mendez, would you like to discuss your proposed recommendations?

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MS. ASHLEY-MENDEZ:

Just want to give a little bit more background on it. The reason for this is because oftentimes we're at the pre-hearing conference closer to the hearing and finding out that a specific ALJ has preferences that are different than maybe another ALJ.

So, this would be similar to like the chamber rules that other Courts have. But we also want to make sure that this is accessible to everyone. So, whether it be published, or like Mr. Shaw said, you know, the standing order or something like that.

So, I think both of these in consideration together make sense.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Yeah, sure, thank you. I share Ms. Ashley-Mendez's concerns greatly. You know, I've been doing this to close to 14 years now. I don't know how many pre-hearing conferences I've participated in.

But the lack of predictability depending on who the particular ALJ is, is quite hard to ascertain from our perspective.

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I can give some concrete examples when it comes to witnesses. I have been told by ALJs that if the witness isn't included in your pre-hearing conference statement, despite disclosing that witness five days prior to the due process hearing as the Federal law requires, we can't call that person. Same with evidence.

Issues for hearing is quite frustrating, I think, on the Parents' side. They are often rewritten. I spent an hour-and-a-half in a PHC last Friday with my issues being revised, reworded, and even no explanation at the end of the PHC about what those issues would be at that point.

Some ALJs will rewrite our issues based on school years. Others based on IEP dates. And we are often in a position where we are showing up to a pre-hearing conference and put in a unique position of having to defend our issues, as we have prepared them as licensed attorneys.

And then asked very specific questions about where, which IEP, what date? Even though we've written, you know, a complaint that specifies all that. And then everything's reworded. And we often don't learn until the order following the pre-hearing conference. Which is generally not issued for two or three days later, of what those issues might be.

And in many cases, substantively changed the issues that we have raised in the complaint. As well as issues with witnesses related just to who the ALJ is going to -- or whether or not the ALJ is going to compel the District to produce witnesses under their control. Some Judges will do it, others will not.

Which puts us in a very precarious position with five working days' notice in many of these cases to issue subpoenas for rushed subpoenas for testimony. Which are incredibly expensive.

We could spend several-thousand dollars in a hearing just to issue subpoenas because there was no order to produce witnesses under the District's control. And we weren't given much notice that that was going to be the procedure for that particular Administrative Law Judge.

I think this provides transparency into what attorneys on both sides can expect when they know who's going to be assigned, at least at the pre-hearing conference. And if there's a change in the Judge they can review those procedures as well.

I have been in a situation where at the pre-hearing conference my issues were changed. And then we get into the first day of hearing, and they are changed back to how they were originally worded. Or perhaps, somehow, you know, somewhat different.

Which I think puts both sides in a precarious position of understanding what actually are the issues for the due process hearing.

Every Court I practice in outside of OAH, individual Judges have standing orders that explain what they expect in their courtroom, and how they're going to handle some of these issues.

And you're required as a licensed attorney to review those orders, not just the local rules but the Judge's standing orders, in order to ensure that you're aware of the rules that, you know by which the process is going to unfold.

DIVISION CHIEF CASTILLO:

Okay. Any comments from members of the Committee? Member Palmer?

MR. PALMER:

Well, it's very disheartening as a Parent to hear what they're sharing is happening. I agree, we're already disadvantaged going into this process.

So, having a clear understanding of the process, the procedures, and the expectations ahead of time, I can see is very important.

Thank you for bringing this forward.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes, I would like to state that I guess as a Parent I'm kind of shocked that each ALJ can basically have their own rules. That's kind of what it sounded like to me.

I don't know why each ALJ would be able to handle things completely differently. That seems to impose a lot of chaos and uncertainty into the whole process. Which I thought was more standardized.

So, again, I appreciate Mr. Shaw bringing that to our attention. It brings a whole new avenue of difficulties for Parents. Thank you.

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

I don't practice at the level he does. But I was just in a hearing, and the ALJ changed the entire issue, that we were going on one key issue that had -- a critical issue that hadn't been agreed upon at mediation. And it was an essential issue for this client.

And the ALJ just said, well, I don't see it that way. This is the way we're going to phrase it. And I just sat there kind of like, wow. It was just discretionary, and that's what they did. And they shifted the entire issue even from our brief.

So, it does happen. What he is saying, it does happen. And he has far more experience, because I don't do as many, obviously, as he does. But it just happened to me two weeks ago.

DIVISION CHIEF CASTILLO:

Ms. Snowden?

MS. SNOWDEN:

Yes, I also practice in front of OAH, State Court, Federal Court, Ninth Circuit. And it does help to know what the Judges' requirements are, their expectations.

And it just -- it is difficult to prepare for a trial if things aren't set and we know what issues are going to be actually presented.

There is also a difficulty with changing of ALJs. And I understand that that happens. But it would be helpful to have the ALJs requirements and expectations, if even minimal, just so that we can follow along.

DIVISION CHIEF CASTILLO:

Any other commends from members of the Committee?

UNIDENTIFIED MALE VOICE:

Judge Castillo?

DIVISION CHIEF CASTILLO:

Yes.

UNIDENTIFIED MALE VOICE:

I have a question. Are there ALJs that do have standing orders or that do share specifics on what they require in the due process proceedings?

DIVISION CHIEF CASTILLO:

I am not aware of an Administrative Law Judge that has, let's say, chamber rules that are -- none are published on our website. Mr. Shaw?

MR. SHAW:

Yeah, just to follow up on that. This is -- and I'm sorry, I don't know the names of everyone in Sacramento.

But this is precisely the concern, is that things are done a little differently. And just having some greater insight into how one particular ALJ might operate their courtroom over another would be, I think, very helpful to both sides.

I'm not sure, you know, it's -- as a Parent attorney, to sit through a pre-hearing conference particular to the issues when, you know, you're prepared. You've prepared them based on school years.

My issues have been copy and pasted by many ALJs just right into the order following the pre-hearing conference for many years.

And then all of a sudden you're being told in the moment that you need to reword them all based on IEP dates. And now you have to spend all this time to look through and try to figure out what those IEP dates are that you already put into your complaint and try to explain the clarity.

It's not just that it provides some inconsistency going into a PHC, just not knowing what's going to happen.

But to be quite frank, it's incredibly demeaning as a licensed attorney who's been practicing in this field for many years, to spend an hour-and-a-half discussing issues for hearing. When we will spend zero amount of time discussing the response the School District filed. Which is supposed to lock them into a defense and supposed to explain their position.

That's what due process is about. It's about understanding what both sides perspective is and then letting somebody else make that decision. Yet, I don't know if

I've encountered an ALJ who has gone through a response as closely as they have looked at the issues that we've set forth in the case. Which I understand is a bit of a separate issue.

But what I'm trying to suggest is to bring some sort of clarity so we have a better understanding and can be more prepared so it's less, perhaps, demeaning for us when we are having to defend our issues. Or sit there in silence while we're trying to figure out IEP dates because we had no prior knowledge that this Judge was going to rewrite our issues based on IEP dates as opposed to school years.

DIVISION CHIEF CASTILLO:

Any other comments from the Committee? Mr. Palmer?

MR. PALMER:

Can I have a little bit of insight into why they would -- the issue of IEP dates versus school year? Why is this an issue? Like can you give me some insight on that?

MR. SHAW:

I couldn't tell you why it is an issue. I can tell you that we've had orders following pre-hearing conference particular to the IEP dates, where now dates are missing. So, it actually shortens the period of exposure possibility in the case and so on.

And I think, you know, it dovetails into, you know, just there have been -- there's a nicer decision out there that questions the logic behind rewriting our issues when, you know, a Parent is represented by a licensed, experienced attorney.

And from my perspective, our issues are being changed beyond just content. Or just for clarification purposes, the actual meaning of the issue or the scope of the issue is changing.

And often, the remedies are incorporated into the issue. Or a specific placement that might be a remedy is incorporated as opposed to looking at what the placement is that was offered in the IEP and determining first whether or not that placement was or was not appropriate.

But that's a little separate and apart from my -- what I'm trying to propose. Which is trying to bring some clarity to those of us who are participating in these pre-hearing conferences or particularly when the Judge changes following a PHC so we know going into the hearing what we can expect.

I can give another example just in terms of hearing dates. I've had a PHC Judge tell me we're only going to go Tuesday through Thursday. We get into the first day of hearing. And the ALJ says we're going five days a week.

And, you know, not just for me personally as a professional who's scheduled -- made a schedule based on what was told to me in a pre-hearing conference, but also the Parent, right? Who has to take time off of work.

Or the School District, who has to find substitutes for its employees so they can participate in the hearing.

It just creates, I think, more problems by not having a better understanding at the onset of how somebody wants to run their Courtroom.

And I'm not suggesting that we have authority to dictate what that is. But we certainly should know how the rules are going to be structured when they vary from Judge to Judge.

DIVISION CHIEF CASTILLO:

The Committee notes what you're saying, Mr. Shaw. Any other comments from the Committee? Seeing none, public comments.

Education Not Litigation, could you please invite that person in? You have three minutes.

EDUCATION NOT LITIGATION:

Thank you so much. First of all, a shoutout to the Special Education Advocate Leaders Group that is livestreaming to their over 4000 members. Most of which are Parents of Students with disabilities.

Regarding item 7a and 7b. OAH should absolutely publish the procedures for due process hearings on their website. This is a no-brainer.

The fact that the Committee has to ask tells us everything we need to know about OAH and the lack of accountability at OAH.

Now, Mr. Shaw made some comments, and basically it's absolutely right. OAH Judges, they make it up as they go along.

(This space is intentionally left blank. Text continues on the following page.)

The Advisory Committee on special education recently heard a report by OAH and commissioners echoed the many concerns about lack of accountability and bias in the OAH accountability report.

DIVISION CHIEF CASTILLO:

I'm going to make a comment here. OAH has not issued an OAH accountability report. No author has ever been identified to the Office of Administrative Hearings.

So, the report that has gone out to the public with -- stating that it has been OAH is untrue. You may continue.

EDUCATION NOT LITIGATION:

Okay. I reclaim my time. And this is on two items. So, this is for 7b. And obviously that got really under your skin. So, I must be over the target on that one.

It should not be left up to each ALJ to make it up as they go along. The accountability report was prepared by Parents and advocates, as well as attorneys. It was a joint effort. And it is being shared.

And it is based on evidence, some of which was provided in lawsuits by OAH ALJs like Margaret Gibson that has a lawsuit on file in Superior Court.

But going back to 7b, the process should absolutely be standardized. Otherwise, Parents will be treated differently depending on which Judge you get. This is mind-boggling.

OAH Judges, we all know they're biased, as the OAH Accountability report lays out. They basically act as an extension of the District.

Mr. Shaw has provided specific examples of how OAH bends over backwards to make it as difficult as possible for Parents. OAH employees are state employees. They are employees of the Department of General Services. OAH is a division of the State Department of General Services.

So, I urge lawyers who are in the front lines, like Mr. Shaw, to file complaints against the state employees. We absolutely have a right to run our Government. This is not about we the bureaucrats. This is about we the people.

And OAH works for the people. So, let's remind them of that, Parents, all those who are listening on livestream. If you have corrupt Judges, which we know we have at OAH, file complaints against them, because they're state employees. Thank you for your time.

DIVISION CHIEF CASTILLO:

Thank you. Lower case natalie.

MS. TROTTER:

You have -- you have three minutes to speak natalie.

NATALIE:

Can you hear me now?

DIVISION CHIEF CASTILLO:

Yes.

NATALIE:

Okay, great. I am calling -- I want to -- I think I'm -- am I echoing here? Let me --

DIVISION CHIEF CASTILLO:

You're sounding fine.

NATALIE:

Okay, sorry. Okay, so I want to call, and I just want to speak on the issue of the OAH not following the law and giving children less rights than they would in regular Court.

For example, I filed a motion to disqualify Judge Castillo, and he, you know, for bias. And he refused to -- not only did he refuse to recuse and let another Judge hear the motion. But he went into argue why he's not biased.

Well, there's clear case law, and the California Supreme Court, it's -- the case is *North American Title Company v. Superior Court v. Fresno County* that there is no waiver for bias. And that another Judge is supposed to decide on the bias, not you. You're not supposed to decide whether you're bias.

So, you are denying FAPE to a child, you know, making litigants go then to another Court, you know, years goes by to appeal. And so, you're intentionally harming children by not following the law on purpose.

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And so, OAH is extremely bias. And they're harming children. And so, that needs to be clear -- that law needs to be clear that the Judge can -- you cannot decide yourself whether you're bias or not.

And also, the Judge, when they are narrowing issues, they cannot narrow it to the point where the child's substantial right or the cause of action is completely gone.

Okay, because that's what happened here. There's a lot of misconduct where, you know, the OAH, the ALJ and then FFF decide that they're going to narrow the issues so much that the child automatically loses the case before the hearing. And that is abuse -- that is total abuse of a child who is -- it's by your Government.

There's government attorney, and you're a government employee. And you're just taking our tax dollars and abusing children. And it's not okay. Thank you.

DIVISION CHIEF CASTILLO:

We've been informed we have an email comment.

MS. TROTTER:

Yes, the email comment is from Cordelia L. Martinez from Education and Elder Law. The comment is, "Would it be a friendly addition to these proposals that the procedures for an ALJ be provided to the parties at the time of reassignment, as Parents may not be aware of the need to research the matter?" End of comment.

(This space is intentionally left blank. Text continues on the following page.)

DIVISION CHIEF CASTILLO:

Thank you. So, for Ms. Ashley-Mendez and Mr. Shaw, did you want to have two recommendations or combine them into one?

MS. ASHLEY-MENDEZ:

For me, I'd think one recommendation, combining them into one recommendation would work.

DIVISION CHIEF CASTILLO:

Okay. Would it be, Mr. Shaw's with the addition that those be published, Ms. Ashley-Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Yeah, I'm trying to reword it.

DIVISION CHIEF CASTILLO:

Okay.

MR. SHAW:

Okay. Yeah, I hear you from the public. The way I reworded this is each ALJ shall create a -- I don't like the word his -- his or her own standing --

DIVISION CHIEF CASTILLO:

Their.

MR. SHAW:

Their, that works too. Each ALJ shall create their own standing order, which specifies how the ALJ will deal with witnesses, evidence, issues for hearing and other issues related to the due process hearing.

Standing orders shall be published and provided to parties when the ALJ -- in the event the ALJ is -- in the event an ALJ is reassigned.

DIVISION CHIEF CASTILLO:

Judge Yazigi?

MS. YAZIGI:

All right, and just to be clear, we're talking about item 7b. That each ALJ shall create their own standing order which specifies how the ALJ will deal with witnesses, evidence, issues for hearing and other issues related to the due process hearing.

(This space is intentionally left blank. Text continues on the following page.)

Standing orders shall be published and provided to parties in the event the ALJ is reassigned. This would be similar to how each State or Federal Court Judges have its own -- how each -- pardon. This would be similar to how each State or Federal Court Judge has their own standing order specific to their courtroom.

Have I captured it?

MR. SHAW:

Yeah, I think that's correct. I don't think that last sentence needs to be included. That's just --

MS. YAZIGI:

So, I'll delete that last sentence. Ending with standing orders shall be published and provided to parties in the event the ALJ is reassigned.

MR. SHAW:

Correct, thank you.

DIVISION CHIEF CASTILLO:

Is there a second? Member Snowden?

MS. SNOWDEN:

Yes, I'll second it.

DIVISION CHIEF CASTILLO:

Okay. Committee comments about what would be recommend 7? Mr. Palmer?

MR. PALMER:

Yes, I just wanted to share that I believe it's inappropriate to interrupt the public comments. According to the Bagley-Keene Act and the section on public participation, it clearly states that the State body may not deliberate on any matter not specified on the agenda.

And also, that the public has the right to -- has the right to, you know, challenge the State Organization. So, that -- I think -- we already limit their time to three minutes. So, we should not be interrupting those comments.

DIVISION CHIEF CASTILLO:

Any other comments on the recommendation for 7? Member Kamm?

MS. KAMM:

Yes. As I said, I'm very concerned that this recommendation is even needed and that there is such a lack of standardization between ALJs. Which definitely does go to the bias of OAH against Parents.

And I would like it noted that I have experienced bias during this meeting, as I asked a question earlier as to the OAHs authority per the -- per the IDEA or the inner-agency agreement to remove items from the agenda and to create an agenda without any input from the Advisory Committee.

You've completely ignored my question, although you did engage with Mr. Shaw and another participant here.

And then when we have people calling in to participate you, again, interrupted a member of the public. So, I think that the bias that is indicated in this recommendation has been exhibited very clearly here throughout this meeting and throughout how OAH handles the Advisory Committee

And I think it's really appalling. It's really appalling. As government workers, you are supposed to be public servants. And to totally usurp the time and effort of the public and the Committee member here, it's just -- it's just incomprehensible to me. Thank you.

DIVISION CHIEF CASTILLO:

Member Snowden?

MS. SNOWDEN:

I had a question on the wording. And I might've missed it, Ms. Yazigi. Was it published on the OAH website? Was that included in the -- Mr. Shaw and Ms. Ashley-Mendez's 7a and b?

MS. YAZIGI:

So, I have one recommendation, recommendation 7 now, I guess. And the way I have it is, as recommended now by Member Shaw.

That each ALJ shall create their own standing order which specifies how the ALJ will deal with witnesses, evidence, issues for hearing, and other issues related to the due process proceeding.

Standing orders shall be published and provided to parties in the event the ALJ is reassigned.

MS. SNOWDEN:

So --

DIVISION CHIEF CASTILLO:

Mr. Shaw, would you like to amend it to add published on the OAH website?

MR. SHAW:

Yeah, I'm good with that. That makes sense.

MS. YAZIGI:

Okay.

DIVISION CHIEF CASTILLO:

Is there a second to that?

MS. SNOWDEN:

I second it.

DIVISION CHIEF CASTILLO:

Okay, seconded. Any further public comments on recommendation 7? Any Committee comments? Education Not Litigation?

MS. TROTTER:

You have -- Education Not Litigation, you have three minutes starting now.

EDUCATION NOT LITIGATION:

Thank you. And thank you Mr. Palmer and Ms. Kamm for advocating on behalf of the Parent community.

I would suggest to Mr. Shaw that he include language that would make it so that the process is somewhat standardized.

I mean, we're asking here for very little to please, OAH make it up as you go along and please tell us what it's going to be.

It should be in compliance with the administrative proceedings at or in compliance with something. Judges are not legislators. They simply cannot make up the rules as they go along.

And all this Committee is asking is please tell us what side of the bed you're going to wake up on, if it's going to be the wrong side or the right side of the bed that morning so that we know and we're begging, please tell us.

This should not be a dictatorship. OAH is a Government Agency. They work for the people. Let's remember that. So, no we are not here in a position to serve them, to light a votive candle to the OAH altar.

OAH has to comply with the law. They don't get to make it up as they go along. They are not a legislative body.

And allowing them to make up the rules as they go along and then simply tell us about it is inappropriate.

So, I would add some language to couch it to say they -- all the procedures, whatever side of the bed they're going to wake up on, have to be within the realm of the Administrative Procedures Act. Thank you.

DIVISION CHIEF CASTILLO:

Natalie?

NATALIE:

Yes, I do want to echo what the last speaker just said. That it appears to me, based on my experience, that the OAH is completely ignoring the administrative procedures at, for example, the California Law clearly states that attorneys cannot on their own impair the substantial right of a person without expressed authority. That means without it being in writing.

So, FFF cannot get together and bribe a Parent's attorney to stipulate to waive a client's substantial rights.

The OAH does not have jurisdiction to uphold a stipulation that isn't signed by the Parent. That is ludicrous. That is -- that is just completely ignoring the child's rights and the client's.

There's tons of case law on it. And just because you're the OAH does not mean that you guys can change the law.

Just like the previous caller said, you are not the legislature. This is not what the IDEA intended when they created the Act. It was to protect Students, not to harm them. Thank you.

DIVISION CHIEF CASTILLO:

Any email?

MS. TROTTER:

No email comments.

DIVISION CHIEF CASTILLO:

Okay. We'll go for the vote. And Judge Yazigi, could you please read the recommendation?

MS. YAZIGI:

That each ALJ shall create their own standing order, which specifies how the ALJ will deal with witnesses, evidence, issues for hearing and other issues related to the due process hearing.

Standing orders shall be published on the OAH website and provided to parties in the event the ALJ is reassigned.

DIVISION CHIEF CASTILLO:

Okay. For Northern California, Member Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Member Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

Member Molina? We can't hear you, Mr. Molina.

MR. MOLINA:

Did that -- there we go. Yes.

DIVISION CHIEF CASTILLO:

Okay. Member Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

Member Mosqueda?

MR. MOSQUEDA:

No.

DIVISION CHIEF CASTILLO:

Okay. That is five I's and one no in Northern California.

For Southern California, Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Member O'Maley?

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

We cannot hear you, Member O'Maley.

MS. O'MALEY:

Yes.

DIVISION CHIEF CASTILLO:

Member Ashley-Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Member Snowden?

MS. SNOWDEN:

Yes.

DIVISION CHIEF CASTILLO:

For Southern California that's six I's. So, it is recommendation for 7 has carried both Committees. And OAH will respond.

It is approximately 1:00 p.m. That is the allocated time for this meeting.

OAH will respond to those proposed recommendations that have passed. And it will be issued to the members and to the public before the agenda items are due.

There will be a transcript published of this after it is remediated for compliance with the American's with Disabilities Act so it can be read on a reader. And that will be published on our website.

And with that, this meeting has concluded. And you may stop the recording and close the meeting. Thank you very much.

- ADVISORY COMMITTEE MEETING CONCLUDED -

CERTIFICATE OF TRANSCRIPT

I, Sherry L. Mainus, hereby certify that this transcript is a true, complete, and accurate transcription of the recording of the Special Education Advisory Committee meeting that took place on October 18, 2024, Office of Administrative Hearings, via Zoom videoconference. This is the original transcript, and the statements that appear in this transcript were transcribed by me to the best of my ability. Executed under penalty of perjury in Sacramento, California on the 5th day of November, 2024.

Sherry L. Mainus

Transcriber

Northern California Court Reporters