

TRANSCRIPTION OF RECORDED MEETING
OF
SPECIAL EDUCATION DIVISION
ADVISORY COMMITTEE MEETING
DECEMBER 16, 2022

BOARD MEMBERS PRESENT:

KATHLEEN ANDERSON
JESSICA BURRONE
JESSICA LITTLE
DANIEL SHAW
MINDY LUBY
AILEEN HERLINA SANDOVAL
MARIANNE GROSNER
ULIE LEWIN
SUE SINGH
JOSHUA WALDEN

OAH STAFF PRESENT:

PETER PAUL CASTILLO
BRITTANY BELL

SPANISH INTERPRETER:

ANDRES MARQUEZ

TRANSCRIBED BY:

MICHELLE JONES, NCCR, Sacramento, California

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

JUDGE CASTILLO:

Today's interpreter is Andres Marquez. And I will turn on the interpretation feature shortly. Mr. Marquez, we're going to do consecutive interpretation if you interpret while I speak.

INTERPRETER MARQUEZ:

Sure.

JUDGE CASTILLO:

Okay. Before we turn on the interpretation feature, there were a few things that everyone will need to follow.

When the feature is turned on, you will see a button in your media controls at the bottom of your screen labeled "interpretation". For everyone attending, whether or not they're a panelist or attendees, you will need to click the button and select the language in which you will listen to the meeting, specifically whether you wish to listen to it in English or Spanish.

The interpreter will only be broadcasting their voice into the channel in which they're currently interpreting into. For this reason, unless you're listening to the Spanish channel, you will not hear the interpreter except for in sentences where they may be interpreting a comment made by a Spanish speaker which will then be interpreted into the English channel by the interpreter.

Okay. We'll now be turning on the interpretation feature. And now if you can select the language in which you want to hear the audio in.

And also this meeting is being closed captioned through the Zoom closed captioning feature. You will see a button on the bottom, "live transcript". If you want to enable that, click that and then view full transcript. And then the closed captioning will be turned on.

I would like to welcome everyone to the continuation of the October 22 Advisory Committee Meeting for the Office of Administrative Hearings Special Education Division. I would like to thank those attending the meeting as both part of the committee, employees of the Office of Administrative Hearings, and members of the public.

I am Peter Paul Castillo, the Division Chief of the Office of Administrative Hearings. To speed this meeting on, I won't introduce other members of the Office of Administrative Hearings, and I'll be taking roll shortly to make sure that we have a quorum in the north and south.

So, for a quorum, I'm going to go down first by Northern California and then Southern California, and if you could turn on your mic to say if you are here or to say present.

Kathleen Anderson?

ATTORNEY ANDERSON:

Present.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Present.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Present.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Present.

JUDGE CASTILLO:

Nicholas Lutton? Mr. Lutton is absent. Daniel Shaw?

ATTORNEY SHAW:

Present.

JUDGE CASTILLO:

Now for the Southern California members. Marianne Grosner?

MS. GROSNER:

Present.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Present.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Present.

JUDGE CASTILLO:

James Lister-Looker? Mr. Lister-Looker is absent. Sue Singh?

MS. SINGH:

Present.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Present.

JUDGE CASTILLO:

Okay. We have a quorum both in the north and the south. We're using the Zoom webinar feature and, as we started, Mr. Shaw had made a comment regarding issues about getting on. And just to inform members of the committee and members of the public who are attending, Zoom has recently updated their security protocols and one

of the updates to Zoom's security protocols is requiring anybody using Zoom, whether or not for an OAH event or any other Zoom event that you may be attending, to have recent software.

So, we will be putting on our OAH website information about how to check and update your Zoom software for using an application on your phone, an iPad or software on your computer. So, there will be general instructions for people about how to update their software.

For people who work for law firms, who may have security restrictions about ability to update your software, I would advise you to please talk to your IT division within your law firm about making sure that they're checking that your Zoom software is the most current version and that they regularly check the Zoom website for your IT people to check. It does list when the regular cycle for updates will be happening for Zoom.

For the Advisory Committee members, we will all be visible on your screen when you are speaking. If you would like to be recognized to speak during any of the comments, please raise your hand using the "raise hand" feature on the bottom center of the screen and then I will call upon you.

And if that is not working and you're having trouble, just make sure your camera is on and just raise your hand. Then I will recognize you and call upon you.

This meeting is being recorded through Zoom. At the conclusion of the meeting, OAH will send the audio recording out and have it transcribed and then post it on our website. The transcript for the October meeting is currently on our website.

For the overview of the Advisory Committee meeting process, when we start the more substantive agenda items, I will ask the person who proposed the agenda item to discuss it and why they requested the agenda item to be on there and any information they wish to discuss.

Then, I'll ask for additional comments from the committee members. Please raise your hands and we will have a discussion amongst the committee members about the agenda item.

When the committee members are done, we will take public comment from members of the public. For members of the public who wish to comment on any agenda item, if you will please raise your hand that you wish to comment and then one of the staff members of OAH will click a button giving you permission to talk. You'll click a button to unmute yourself and then you'll be able to give your public comment. Public comments are limited to three minutes in length.

If you wish to make an email comment, you may do so. What we ask that you do is that if you wish to make an email comment, to please list the agenda item that you wish to talk on. We will be starting on Agenda Item 18, as this is a continuation, and I will introduce a number from the agenda as we move through each topic. And please just give the agenda item that you wish to speak on. Otherwise, your comments will just go into the general public comments that we'll take at the end of the committee meeting.

If you are participating by telephone and not through a computer, Chromebook, or application, once you are given permission to talk, to you raise your hand on your

phone, hit Star-9 and that'll raise your hand on the phone. And when you hear the audio sound about giving permission to talk, hit Star-6 to unmute yourself. And then we will be able to mute after the end of your public comment.

After the public comments are done, I will ask the committee members if anybody wishes to make a recommendation on the agenda item. We will discuss the recommendation. We will frame the issue that somebody wants as the recommendation. Then I will ask for a second. And if there is a second from the committee, then we'll have further discussion amongst the committee about the recommendation, have further comments from the public, and then take a vote on the agenda item.

If the agenda item passes through roll call as something the committee wishes OAH to address, OAH will prepare a response as to the recommendations from the October and from the December meeting and have that prepared and distributed to the committee members and to the public on their website and all lists are there before the next committee meeting in June.

Are there any questions from the committee members about the process?

This meeting is covered by the Open Meetings Act. Each members is expected -- has been sent a copy of the Open Meetings Act and is expected to follow, not only during this meeting, but outside of the meeting while you are committee members. A copy of the Open Meetings Act can also be found on the OAH website in the Advisory Committee section.

With that, we are going to go to Item 18, which is the agenda item we left off. We had discussed and had finished last meeting at Agenda Item 17, and now to Agenda Item 18, use and access to OAH orders and decisions. There is 18A through E on this.

We'll start on 18A. The agenda item is that OAH post all orders on its website accessible to the public. Alternatively if OAH declines to post all orders on its website, if OAH posts an order in a specific case, it should post all the orders issued in the case. And this was submitted by Kathleen Anderson. Ms. Anderson, would you like to discuss this?

ATTORNEY ANDERSON:

Sure. Good morning everybody. I'm aware and realize that OAH has been requested previously to post all these on its website and has not done so up to this point in time, but I wanted to reintroduce that request and let OAH know that we're still interested in having all of the orders posted on the OAH website.

But if OAH does not post all of the orders on the website, it would be very helpful when OAH posts an order in a specific case if it makes sure that it posts all the orders in that specific case. So that someone who is reading that case can see the full picture of what has gone on procedurally, different arguments, different matters that have been addressed, and can see it all in one package.

JUDGE CASTILLO:

And that's in 18B, and we'll get to that after discussion on 18 --

ATTORNEY ANDERSON:

Well --

JUDGE CASTILLO:

Oh, actually, no, I'm sorry. You're right.

ATTORNEY ANDERSON:

-- yeah.

JUDGE CASTILLO:

Okay. Is there any discussion from any of the committee members on this agenda item, 18A?

Seeing none, is there any comments from the public on Agenda Item 18A?

Seeing no hands raised from the attendees, have we received any emails on this agenda item? Oh, actually, go back. We do have one question from Ms. Whiteleather -- or comment from Ms. Whiteleather.

MS. BELL:

Okay. Tonya Whiteleather, I have allowed you to unmute yourself. Your three minutes will begin now.

ATTENDEE WHITELEATHER:

Thank you. Good morning, Tonya Whiteleather from Southern Cal. I know we kind of touched on this on the -- before at the previous meeting. Just that I need to understand, and I've searched all over for the authority that says only some of the decisions or that OAH, the agency itself, decides what shall be done. I've seen some things that would be very, very helpful for all parties involved in guiding them.

And it used to be that we got all the decisions, but with OAH, we're not getting them. So, it's very confusing when there are things that are very instructive to both sides, to all levels, even including parents who aren't represented. They're not there.

But, again, I cannot find any authority that says somebody will -- and I'm using a term that's terribly offensive and I don't mean to do that, but cherry picking and deciding, you know, we'll do this one or we'll do that one. I think everybody needs to know what's coming down. Thank you.

JUDGE CASTILLO:

Seeing no other requests for public comment, any email comment?

MS. BELL:

There is no written comment for 18A.

JUDGE CASTILLO:

Okay. For 18A, Ms. Anderson, would you like to make a recommendation?

ATTORNEY ANDERSON:

Sure. The recommendation would be that OAH post all of the orders on its website in a searchable fashion so that all members of the public can access all of the orders.

Alternatively, if OAH declines to post all of the orders on the website that when OAH posts an order in one particular case that it posts all the orders in that specific case.

JUDGE CASTILLO:

Okay. Judge Yazigi, did you get the recommendation?

JUDGE YAZIGI:

I did, and it tracks what's written in the agenda.

JUDGE CASTILLO:

Thank you. Would anybody from the committee like to second this?

Dr. Sandoval?

DR. SANDOVAL:

I second.

JUDGE CASTILLO:

You second, okay. Is there any further -- we have a second from Dr. Sandoval. Is there any discussion on this recommendation from the committee members?

Seeing none, is there any public comment on the recommendation that OAH respond to?

Seeing no public comment on this, is there any email?

MS. BELL:

No written comment.

JUDGE CASTILLO:

Okay. We will take a vote on Agenda Item 18A and I'll go through the roll regarding recommendation for 18A, Ms. Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Ms. Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Ms. Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Ms. Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Mr. Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Ms. Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Ms. Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Ms. Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Ms. Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Mr. Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

Okay. The recommendation for 18A has passed unanimously by both sections and OAH will be submitting a response to that.

For Agenda Item 18B, that OAH should issue a rule that when an OAH order is cited in pleading and that order is not available on OAH's website, a true and correct copy of that order should be attached as an exhibit to the pleading.

And this is submitted by Ms. Anderson, if you'd like to discuss this further.

ATTORNEY ANDERSON:

I think it's been made clear over time that some people have better access to resources than others and one place that this really shows up is when orders, as opposed to decisions, are cited in generally motions.

Some people don't have access to those orders or can't get their hands on them for whatever reason and so my proposal is that the person who is citing the order, who's using it in their motion, needs to attach it as an exhibit so that the other party or parties can see it and have easy access to it.

And I might even go so far as to add that if the person writing the motion does not attach the order then OAH would not consider that order in its deliberation on its motion. And I think this just levels the playing field a little bit better than things are now.

JUDGE CASTILLO:

Any comment from the committee members? Mr. Shaw?

ATTORNEY SHAW:

Sure. Just two comments. One, I have concern about this recommendation specific to pro per parents who might not be as sophisticated to realize that they need to attach an order.

And certainly their argument should be considered regardless of whether they attach an order or not.

I'd also note that my understanding is under the California Rules of Court, there's actually a rule that if a party request a copy of an authority cited to by an opposing party that they do not have access to that there is a requirement to produce that authority and the failure to do so can actually be sanctionable conduct.

And while I understand we don't abide by the California Rules of Court per se, I think there is some authority for this already that exists.

JUDGE CASTILLO:

Any other comments on this agenda item by the committee members?

Seeing none, any comments from the public attendees on this agenda item?

Seeing none, any email comments on Agenda Item 18B?

MS. BELL:

No written comment.

JUDGE CASTILLO:

Okay. Ms. Anderson, would you like to make a recommendation regarding Agenda Item 18B?

ATTORNEY ANDERSON:

Well, can I ask Mr. Shaw a question or do I need to make a recommendation first?

JUDGE CASTILLO:

Make a recommendation first.

ATTORNEY ANDERSON:

Okay. All right. That when a party cites an order in its motion, that the order needs to be attached to that motion.

JUDGE CASTILLO:

Do you have that, Judge Yazigi?

JUDGE YAZIGI:

I do. It's that OAH should issue a rule that when an OAH order is cited in a pleading and the order is not available on OAH's website, a true and correct copy of that order should be attached as an exhibit to the pleading.

JUDGE CASTILLO:

Thank you. Would any of the committee members like to second the recommendation for 18B?

Seeing no second of this motion, it will not be voted upon. We'll move on to the next agenda item, 18C. That is that OAH provide a party a copy of an OAH order and/or decision that the other party has cited to in a pleading. This is from Daniel Shaw.

Mr. Shaw, would you discuss this further?

ATTORNEY SHAW:

Yes, thank you. Good morning, everyone. I think the way I framed this in my request is a little different and I tweaked it a little bit more.

I share Ms. Anderson's concerns, as well as some of those expressed by the public in terms of accessing orders or decisions that are cited to in a party's pleading that we don't have access to.

It's been my experience when we've attempted to call the OAH clerk to access those orders, we are told to file a public records request, which obviously takes a lot longer than the three days we generally have to respond to some sort of motion or pleading.

So, the way I would frame this, and I think it was framed somewhat along these lines in my original suggestion, was upon request to an OAH clerk assigned to the case without the need to file a public records request OAH shall provide a party with the OAH order or decision relied upon in an opposing party's pleading.

JUDGE CASTILLO:

We'll take public comment and, just FYI, Mr. Shaw, I'll probably ask you again to rephrase that for Judge Yazigi and her notes if there's going to be a recommendation based on that.

Any comments from members of the committee on 18C and what Mr. Shaw has raised? Ms. Grosner?

MS. GROSNER:

Thank you, Your Honor. I was just going to say that -- my comment is just that actually sounds really reasonable. I didn't realize that you would actually have to do a public records request, which takes much, much longer than the three days that were needed. So, I appreciate this agenda item.

JUDGE CASTILLO:

Okay. Kathleen Anderson?

ATTORNEY ANDERSON:

Thank you. I see Mr. Shaw's point and I think that's a good one about those who have trouble accessing the orders to begin with, as my proposal might make that more difficult.

But I feel that those who do have access to orders should be responsible for putting them -- you know, attaching them to the pleadings and maybe there's no way to come up with a happy medium.

I'm not sure how much time it would take OAH to be providing these orders, and that was why my proposal was the writer needed to attach it, but Mr. Shaw makes a good point that if the writer doesn't have access to them then it defeats that purpose.

That's all I wanted to say.

JUDGE CASTILLO:

Are there any other further comments on 18C from members of the committee?

Okay. Now, Mr. Shaw?

ATTORNEY SHAW:

Sorry, I couldn't push the hand button quick enough.

In coming up with this idea, the other thing I was factoring in was looking at the history of this issue coming up to put all orders and decisions on the website and OAH's response, which is that, you know, under the ADA requirements they have to make them all accessible and that's quite a tremendous and tedious process to do.

And so this seemed like kind of the happy medium of being able to get access to those orders or decisions when needed as opposed to, you know, what's been repeatedly requested and denied in the past.

JUDGE CASTILLO:

Okay. Any further comments from members of the committee?

Any comments on Agenda Item 18C from members of the public? Tonya Whiteleather?

MS. BELL:

Tonya Whiteleather, you have the ability to speak. Your three minutes begins now.

ATTENDEE WHITELEATHER:

Thank you. Just that we want to be fair to all parties and I would hope that in looking at any information, especially because this is supposed to be a informal core hearing when we're in due process, that the fact that there are lots of people who don't have access to this information. Every other court, every other venue, we do. I can research. I can get online. I can find. But we don't. And what that does, especially when most school districts have a law firm, most of them -- many of them have big law firms that may have more resources than parents. And parents can't find them and some of the smaller law firms, given what we have, can't even find orders and things. We may have connections but we just want to be fair.

And for somebody to not be able to access information, as I said before, not only limits their ability to understand where they may be headed rightfully or wrongfully, but it's simply not the way legal should go.

We should have access to prior hearings and rulings so that we can understand and react appropriately. Thank you.

JUDGE CASTILLO:

Any other comments from members of the public on 18C?

Any email comments?

MS. BELL:

We do have one written comment. Just a reminder to the attendees, I will be speaking slow and clearly for translation.

The message is "Hello, my name is Rachel Tolapie (phonetic), parent of two special needs students with IEPs in Southern California.

I appreciate the efforts of OAH and this committee to collaborate with families on Item Number 18, Letters C, D, and E seem to stay inline with the spirit of transparency and collaboration in what parents have already shared is a very difficult journey navigating the legal system.

All we ask is that our children receive the supports they need in the schools they attend. This is what we look towards the schools to provide. So, entering into a legal battle in an arena that most of us are unfamiliar with is extremely disheartening.

The additional information time and accessibility proposed in the recommendation Item Number 18, C, D, and E, could help give families a better chance to help advocate for their children.

It is sad that we even have to go this route to force the districts to provide what our tax dollars pay for and what our children are entitled to. In the end, I would hope that our goal is to educate children and not leave them to be relinquished to a life of dependency on a system that has already failed them.

Committee Members, I ask that you support the recommendation of Item Number 18, Letters C, D, and E only. Thank you."

That's the end of the written comment.

JUDGE CASTILLO:

Thank you. Mr. Shaw, would you like to make a recommendation about Agenda Item 18C?

ATTORNEY SHAW:

Yes, my recommendation would be upon request to a OAH clerk assigned to a case without the need to file a public records request, OAH shall provide a party with an order or decision relied upon by the -- well, actually I think it could just end there.

JUDGE CASTILLO:

That OAH provide a copy period.

ATTORNEY SHAW:

Uh-huh (affirmative).

JUDGE CASTILLO:

Judge Yazigi?

JUDGE YAZIGI:

So, just to reiterate what I have is upon request to an OAH clerk assigned to the case without having to file a PR request, OAH shall provide the party with an order or decision requested -- the order --

ATTORNEY SHAW:

Yeah --

JUDGE YAZIGI:

-- the order that's been requested.

ATTORNEY SHAW:

-- yeah, and the reason I cut it short was because I started thinking like sometimes when you're researching and you're looking at, you know, an order that cites to another order, if you can't get that order, you might want to see that order for purposes of putting together a pleading, something along those lines.

JUDGE CASTILLO:

Thank you. Would any member of the committee like to second the recommendation? Ms. Grosner?

MS. GROSNER:

Yes, I'd like to second it.

JUDGE CASTILLO:

Okay. Having a second, we will take -- we will have further comments. Any further comments on 18C and recommendation from members of the committee?

Any comments from members of the public regarding Mr. Shaw's recommendation for Agenda Item 18C for OAH to consider?

Seeing none, any email comment regarding the recommendation for 18C?

MS. BELL:

There are no further written comments for 18C.

JUDGE CASTILLO:

Okay. We will take a vote regarding the recommendation for 18C.
Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

The recommendation passes 5-0 for each committee. OAH will issue a response to the recommendation.

Now to 18D, Agenda Item 18D, that OAH give the party three additional days after OAH provides the OAH order and/or decision to file a response. Submitted by Mr. Shaw. Would you like to discuss this further, Mr. Shaw?

ATTORNEY SHAW:

Yes, thank you. The way I had written it was in the event that a request is made pursuant to the prior recommendation that the requesting party shall be provided, not necessarily an additional three days, but three days from the date that they received the requested documents to file responsive pleadings.

I think it's important when creating briefs that you have the opportunity to read those and digest the information as you formulate your response. And if it takes a

couple of days to get those documents and that three-day kind of window has passed, it would be unfortunate to have a order issued prior to having the opportunity to utilize the information that you just had access to.

JUDGE CASTILLO:

Any comment from members of the committee regarding Agenda Item 18D?
Kathleen Anderson?

ATTORNEY ANDERSON:

I guess I have a question. How would the other party know that that request has been made and, therefore, there's going to be another or an additional three days? I don't object to the additional three days. I just don't know how the other party would know that that was the case because the other party was probably looking at the calendar thinking an opposition is going to come in. That's just my question.

JUDGE CASTILLO:

Any other further comment from members of the committee on this? Mr. Shaw?

ATTORNEY SHAW:

Sure. I think that's a great question. Perhaps something I didn't think through very well, but I think sometimes we issue -- the three-day rule, I'm not sure if that's a bright line rule or kind of a policy. It's just my understanding.

So, I'm not sure. I mean I've certainly seen motions that I've not responded to sit longer than three days before an order be issued, so I'm not -- I'm open to any thoughts or suggestions on how to adjust or alleviate that concern, for sure.

JUDGE CASTILLO:

Any further comments from members of the committee on Agenda Item 18D?

Any comments from members of the public on Agenda Item 18D?

MS. BELL:

There's no written comment for this one.

JUDGE CASTILLO:

Okay. So, no public comment and no email comments on 18D. Mr. Shaw, would you like to have a recommendation?

ATTORNEY SHAW:

Yeah, I would recommend that in the event a request is made pursuant to Recommendation 18C, the requesting party shall be provided an additional three days from the issuance of the requested document to file responsive pleadings.

JUDGE YAZIGI:

I apologize. If you could do that just one more time? A little more slowly.

ATTORNEY SHAW:

Of course. In the event a request is made pursuant to Recommendation 18C, the requesting party shall be provided an additional three days from the issuance of the requested document to file responsive pleadings.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

Okay. Would any members of the committee like to second the recommendation on Agenda Item 18D? Julie Lewin?

ATTORNEY LEWIN:

I second.

JUDGE CASTILLO:

Okay, Julie Lewin seconds the recommendation for 18D. Any further comments from members of the committee as to the recommendation put forth by Mr. Shaw?

Seeing no further comments from members of the committee, any comments on the recommendation from members of the public?

Seeing no public comment on the recommendation for 18D, do we have any email comment?

MS. BELL:

No email comments.

JUDGE CASTILLO:

Okay. With that, we will take a vote on the recommendation for Agenda Item 18D. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

It is passed 5-0 in each of the respective committees and OAH will make a response as to the recommendation for 18D.

As to Item 18E, the agenda item is that OAH make available on its website settlements by decision in the same way that OAH makes its decisions available.

Mr. Shaw, is there anything further that you would like to discuss on this?

ATTORNEY SHAW:

No, this was based off of a comment from the first meeting I participated in where one of the members of the public said they had several settlements by a decision that were not available through the search engine. I think those are rare, but very important to have accessible to the public.

JUDGE CASTILLO:

Any comments by members of the committee?

Seeing no comment, any comments on Agenda Item 18E from members of the public?

Seeing no public comment, any email comments on Agenda Item 18E?

MS. BELL:

No written comments.

JUDGE CASTILLO:

Okay. Mr. Shaw, would you like to make a recommendation about Agenda Item 18E?

ATTORNEY SHAW:

I recommend that the OAH make available on its website all settlements by decision.

JUDGE CASTILLO:

Do you have that, Judge Yazigi?

JUDGE YAZIGI:

I do, thank you.

JUDGE CASTILLO:

Okay. Would any member of the committee like to second that recommendation? Marianne Grosner?

MS. GROSNER:

Yes, I'd like to second it.

JUDGE CASTILLO:

Okay. Is there any discussion or comment by members of the committee as to the recommendation as to Agenda Item 18E?

Seeing none, is there any comment from members of the public about the recommendation regarding Agenda Item 18E?

Seeing none, is there any email comment on Agenda Item 18E?

MS. BELL:

No email comments.

JUDGE CASTILLO:

On the recommendation?

MS. BELL:

Sorry.

JUDGE CASTILLO:

I'm sorry talking over you, Ms. Bell. We will take a vote on the recommendation on 18E on making the decisions by settlement available. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone? Jessica Burrone?

DIRECTOR BURRONE:

Yes. Sorry, I'm having -- I think I'm freezing, but, yes.

JUDGE CASTILLO:

Okay. We got your vote. Thank you.

DIRECTOR BURRONE:

Okay.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

The recommendation for Agenda Item 18E has passed by a vote of five to zero in both Northern California and Southern California.

For any members of the committee, if you're having a technical issue, if you can just raise your hand any time during the meeting and we will stop and talk and members of our operations staff may talk to you offline by email or other means to provide assistance if you're having issues.

Moving to Agenda Item 19A involving subpoenas duces tecum and the OAH form, 19A, that OAH put on its form an explanation of the timelines for issuing a subpoena duces tecum. Mr. Shaw?

ATTORNEY SHAW:

Sure. So, in reviewing the form and understanding that this is a process that should be parent friendly. We have a lot of pro per parents out there.

I think it's important that the OAH subpoena duces tecum form explains the timelines with respect to the issuance of a subpoena duces tecum.

JUDGE CASTILLO:

Any comments from the members of the committee on Agenda Item 19A?

I'm not seeing any comments from the -- oh, Ms. Mindy Luby?

MS. LUBY:

Thank you, sorry. I had a hard time finding that button. I just want to say thank you. So, as a parent and as a non-attorney advocate, so much of this is foreign to me, so I appreciate the introduction since I don't practice law, right?

But I do want to appreciate and acknowledge Mr. Shaw for really focusing on the parent's ability to access and understand all of these pieces. So, I'm definitely in support of this and I just want to say thank you.

JUDGE CASTILLO:

Okay. Any further comment from members of the committee on Agenda Item 19A? Marianne Grosner?

MS. GROSNER:

Yes, Your Honor. I was just going to echo what Mindy said. I do appreciate Member Shaw and his efforts, so I do thank him for that and I support this as well.

JUDGE CASTILLO:

Any further comments from any member of the committee?

Going to the public, any comments from members of -- and we have one hand up from Concerned Citizen.

MS. BELL:

Concerned Citizen, you have the ability to unmute. Your three minutes will begin now.

ATTENDEE CONCERNED CITIZEN:

Hi, thank you very much. Yes, as the previous speakers had just mentioned, I'm very concerned about the language being used. I am not an attorney and I think we have many, many people on this call who aren't attorneys and don't have legal backgrounds. Quite honestly, I don't even know what the heck a subpoena duces tecum is.

So, I'm hoping that somebody can explain it because we're talking about all of these terms and it seems like the parents are just shut out of this entire meeting. I've been listening, and quite honestly, there are so many terms being thrown around that I have no idea what they even mean.

So, I know I'm supposed to be just making a comment, but I certainly hope that somebody will define this for those of us who don't have a legal background. Thank you.

JUDGE CASTILLO:

And response to the question or discuss it briefly, then we'll take more comments from members of the public. Hearings as to a due process complaint filed by either Parent, Student, or School District, any participant in the administrative hearing if it goes forward has the right to subpoena witnesses to attend and also the right to subpoena the other side or other witnesses for the production of documents, and the term for the subpoena for production of documents is subpoena duces tecum. And it is issued and served upon the person or entity that has the records to be produced.

The OAH website and/or handbook contains information about how the subpoena duces tecum is to be completed, the form, and then to be issued in this

matter, the subpoena duces tecum form does contain information and what Mr. Shaw and other members of the committee have discussed is is the information provided on that form adequate for people using that form? Who are participating in our administrative hearings.

Are there further comments from members of the public involving Agenda Item 19A?

Seeing none -- oh, Ms. Tonya Whiteleather?

MS. BELL:

Ms. Whiteleather, your three minutes begins now.

ATTENDEE WHITELEATHER:

Thank you. I think this is a huge difficulty for parents in this process, where we many, many times do have in pro pers. And I thank you, Judge Castillo, for your explanation. But as the lawyers in the room know, there's far more to the SDT process because SDTs cannot just be issued the way they can in civil litigation.

So, even parents who get to the point of getting out, going to the law library or researching online and finding out about SDTs, don't know necessarily about limitations. I mean there's a whole special way that these are handled and, for many years, we had conflicts and we still do.

Some ALJs will say okay. I had one that decided that you can just conduct discovery in 2020, and you could ask for everything, when we actually have limitations in our administrative procedures that don't allow discovery, as *MC v. Antelope Valley* said.

So, it's just -- the definitions are not there and I think it's very confusing to parents what they can do and the timelines and I think this would be helpful.

JUDGE CASTILLO:

Thank you. Any other further comments from members of the public?

Any further comments via email?

MS. BELL:

No email comments.

JUDGE CASTILLO:

Ms. Bell, would you like to -- before we get into the recommendation, the request from the interpreter about people participating in the committee in this meeting.

MS. BELL:

I'm sorry, Judge Castillo, who was your question directed towards?

JUDGE CASTILLO:

To you. I think there had been requests from the interpreter to all participants in this process.

MS. BELL:

Yes, thank you. Just want to remind the panelists to please try to speak clearly and loudly. This will help the interpreter with translation.

JUDGE CASTILLO:

Thank you.

MS. BELL:

Thank you.

JUDGE CASTILLO:

And for the interpreter, if there's anytime that you need things repeated, please raise your hand and then we'll ask the person, even if it's me, to repeat ourselves.

Mr. Shaw, would you like to make a recommendation regarding Agenda Item 19A?

ATTORNEY SHAW:

Yes. That with respect to the OAH subpoena duces tecum form that the OAH includes an explanation of the timelines, the applicable timelines, for issuing a subpoena duces tecum.

JUDGE YAZIGI:

If I can interject? Mr. Shaw, in substance is that the same as how it's listed as 19A on the agenda?

ATTORNEY SHAW:

Yes, it is, Your Honor.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

Is there any committee member who would like to second the recommendation for Agenda Item 19A? Julie Lewin?

ATTORNEY LEWIN:

I second.

JUDGE CASTILLO:

Okay. Any further discussions by members of the committee as agenda item -- the recommendation for Agenda Item 19A?

Seeing none, any comments regarding the recommendation for Agenda Item 19A from members of the public?

Seeing none, any email comments regarding the recommendation?

MS. BELL:

No email comments.

JUDGE CASTILLO:

Okay. We'll take a vote on the recommendation for 19A. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE YAZIGI:

Ms. Anderson, how did you vote, please?

ATTORNEY ANDERSON:

Yes.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

The recommendation for Agenda Item 19A passes 5-0 in both the Northern California and Southern California committee. OAH will issue a response as to this agenda item.

And just to inform everyone, we'll be taking a break in about 10 or 15 minutes. We'll have a 15-minute break at that time.

Agenda Item 19B, that OAH require that subpoena duces tecum served by mail be by certified mail, return receipt requested. Mr. Shaw?

ATTORNEY SHAW:

Yeah, I don't believe this is how I presented the information. What I was suggesting was it is my understanding under the code that when a subpoena duces tecum is issued via mail it is supposed to be issued via certified mail, return receipt requested. And if I'm mistaken on that, someone please correct me.

But if that is the case, I think it's important that the subpoena form that OAH provides specifies this as opposed to simply stating that the subpoena duces tecum should be sent by US mail.

JUDGE CASTILLO:

Any comments on Agenda Item 19B from members of the committee?

Any comments from members of the public as to Agenda Item 19B?

Seeing no request for public comment on 19B, any email comments on 19B?

MS. BELL:

No email comment.

JUDGE CASTILLO:

Okay. Mr. Shaw, would you like to make a recommendation regarding Agenda Item 19B?

ATTORNEY SHAW:

Yes, that the OAH subpoena duces tecum form specifies that a subpoena duces tecum certified by mail -- or served by mail be certified mail, return receipt requested.

JUDGE CASTILLO:

Do you have that, Judge Yazigi?

JUDGE YAZIGI:

One moment, please. Mr. Shaw, a question for you. I just want to make sure that we're keeping with the spirit and intent of your recommendation.

I have that if OAH requires that SDTs be served by certified mail, return receipt requested, that this requirement be specified on the SDT form. Does that capture what you were recommending?

ATTORNEY SHAW:

For the most part. My understanding is that the regulations basically go back to certain sections of the civil code and if you look at those code sections when it's talking about SDTs issued by mail, it specifies that they be issued certified mail, return receipt requested, which is different than just sending it in the mail.

And that -- it would be a shame for a parent's SDT to be rejected on a procedural ground because it wasn't sent the right way.

JUDGE YAZIGI:

And I understood your recommendation to not be that that requirement be imposed. It's just that if it exists, that it be clear.

ATTORNEY SHAW:

Correct. Yes.

JUDGE YAZIGI:

So, what I have -- I read what I have, but then if you -- I think you mentioned something about that the OAH subpoena form specify the requirement that SDTs must be certified -- be served by certified mail, return receipt requested.

So, I kind of have two different versions. I took some editing liberties with my version, but you let me know.

ATTORNEY SHAW:

I'm certainly not advocating if that does not exist that that be imposed.

JUDGE YAZIGI:

So, then if OAH requires that SDTs be served by certified mail, return receipt requested, that this requirement be specified on the SDT form?

ATTORNEY SHAW:

Correct, yes.

JUDGE YAZIGI:

Okay, thank you. I just wanted to be true to the spirit of what you're recommending.

ATTORNEY SHAW:

Thank you.

JUDGE CASTILLO:

Thank you, Mr. Shaw. Ms. Lewin, would you like to second the recommendation or do you have a question?

ATTORNEY LEWIN:

I have a comment.

JUDGE CASTILLO:

Okay.

ATTORNEY LEWIN:

I guess I would just recommend that maybe you want to change it to say that the form just specify how it needs to be served.

ATTORNEY SHAW:

I like that suggestion.

JUDGE CASTILLO:

For members of the public, the form just says mailed. I mean it says if you mail it, please put the address on the form. If you serve by email, put the email address. If you serve it by fax, the fax number. And if you serve it personal service, the name of the person who did the personal service, and we're personally served.

So, I think what Mr. Shaw is getting to is more explanation as to the different manners of service and that more explanation of the various manners of service; in this case, by mail, what is required by law and regulation.

JUDGE YAZIGI:

So, Mr. Shaw, it sounded like you were willing to entertain a friendly amendment to the recommendation and here's what I have. Correct me if I'm wrong if this is what you wanted the recommendation to be, which is that the OAH subpoena form specify any requirement on how the SDT must be served.

ATTORNEY SHAW:

I like that better. Yes.

JUDGE YAZIGI:

Okay. And this is specific to SDTs?

ATTORNEY SHAW:

Yes, and specific to service by mail.

JUDGE YAZIGI:

Must be -- how SDTs must be served by mail.

JUDGE CASTILLO:

Would any member of the committee like to second the recommendation as just phrased? Julie Lewin?

ATTORNEY LEWIN:

I second.

JUDGE CASTILLO:

Okay. Any discussion by members of the committee regarding the recommendation for Agenda Item 19B?

Seeing none, any comments by members of the public regarding the recommendation for 19B?

Seeing none, any comments regarding the recommendation by email?

MS. BELL:

No email comment.

JUDGE CASTILLO:

Okay. We'll take a vote on Agenda Item 19 -- the recommendation for Agenda Item 19B. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

The recommendation for Agenda Item 19B passes 5-0 in each of the Northern California and Southern California committee.

At this time, before we get into Agenda Item 19C, we'll be taking a break. We will be taking a break until 10:30. It is currently 10:16 a.m. and, when we return, we'll come back on Agenda Item 19C. Thank you.

(Off the Record)

JUDGE CASTILLO:

We are back from our morning recess and we have a quorum still with members of the Northern California and Southern California members who are in attendance -- excuse me -- and we will now move to Agenda Item 19C.

The agenda item is that OAH delete language in the subpoena duces tecum form that subpoena documents be uploaded to Case Center five days before the start of the hearing. Mr. Shaw?

ATTORNEY SHAW:

Sure. The thought behind this recommendation -- I apologize, I can't find my notes. But the thought behind this recommendation, as I'm sure most attorneys are aware, that there is no pretrial discovery in Special Education proceedings. So, we can

only subpoena records to be produced on the first day of hearing and back before virtual hearings, when we did these in person, we would be provided a copy of the subpoena documents on the first day of the hearing.

I've been told that the reason for this requirement is so the administrative law judge can review those records and determine what is or is not relevant and I have concern about that. Because I believe the attorneys are capable of determining what is or is not relevant, or what can or cannot be used.

We also have the ability to issue a motion to quash, to limit the scope of the requested records if we think it's beyond what is relevant for the underlying due process hearing.

My final concern with this requirement has to do particularly with the appeal of a manifestation determination, and my understanding of the timelines that apply, particular to a subpoena duces tecum, those manifestation determinations are supposed to -- or those appeals are supposed to take place within a 20-day period.

The timelines -- and I don't have my notes in front of me, so if I misstate them but my recollection is 15 days for a subpoena duces tecum plus five if sent by mail, which makes it virtually impossible to timely issue those if you're tacking on an additional five days that those documents have to be produced.

JUDGE CASTILLO:

Before I'll get comments, I'll explain some of the thought from OAH going as to what a manifestation determination. The hearing starts 20 school days after the filing, so

it's not calendar days. It's school days. And so for those, our clerks will look at the calendar of the school district, county office of education or charter school, and then calculate the date for the hearing to start.

The five day is twofold. One is in the -- before the video conference hearings, if documents were sent to OAH, a copy, they were all sent to Sacramento and not to the regional offices; whereas general jurisdiction, the hearings are done by judges in the different regional offices in which the responded licensee operates. That's not the case for Special Education Division, so it would be sent to Sacramento and time would have to be then factored into for those documents to be sent to the ALJ at his or her respective regional office, where they were, so they could take those documents to the hearing and also if there had been a motion to quash filed, review those documents and determine whether or not to grant or deny or grant in part or deny in part the motion to quash and produce the documents beforehand.

For now with Case Center and electronic documents and video conferencing hearings, the reason for the five day rule are twofold. One is the questions that we get from the people who are producing documents. There's a lot of time where our staff get questions about that and it takes us time to talk to them and work them through the process, so we can get those documents produced and so they're ready to be reviewed, et cetera, at the hearing.

So, a lot of it is just internally, with documents, we've had issues where documents -- parties during the hearing will subpoena documents because something comes up during the middle of hearing. They determine they need to subpoena documents and our staff has to rush and answer questions and it just delays the

process, and it puts a lot of undue pressure on our staff to answer those questions at the last moment to get those done. So, having five days affords our staff additional time to answer any questions for the people to produce the documents.

Additionally, as to if there's any filed motions to quash in which the ALJ has to review the records, it allows the ALJ to have those records to review, review the motion to quash, and then make a determination at the start of the hearing.

Otherwise, if the documents are not produced until the day of the hearing, it will delay the hearing because a judge, especially if it's the person who will testify as to his or her document is the first witness, if a ruling needs to be made, the party filed and the documents aren't filed until that morning, that witness, especially if it's an expert witness, is delayed based on his or her schedule. And, as everyone knows, how hard it is to schedule experts.

So, this is an attempt to have rulings made as soon before the hearing or before a witness has testified to have matters discussed before witnesses testify as to relevancy. I mean there's no question whether or not a document is relevant or not until it is moved to be introduced.

So, there's no issue of relevancy. It does not matter at that time because you're not going to know if a document is or is not relevant until it is introduced or there is testimony on it. Because sometimes a document may not be relevant at the start of the hearing, but based on testimony of different witnesses, et cetera, later on it does become relevant.

So, it is not unexpected (inaudible) an objection to relevancy is granted, but later on the document is introduced because there's further evidence that's produced at the hearing that shows that the document is relevant at a later time.

Mr. Shaw? And finally, the last thing is we don't disclose those documents to the other -- to any of the parties. So, when we send out the link -- so the process, when we get a copy of the subpoena duces tecum, we send a link to the party on the email that is provided to us. And we create on Case Center what's known as a section bundle. Subpoena duces tecum to so-and-so psychiatric center. And we send it off to that center.

The only person who has access to that is the judge. We don't check the boxes for the attorneys to have access. So, the attorneys will not have access to that until the judge checks the box.

So, if there's an objection raised at the start of the hearing and the motion to quash is granted, the box won't be checked.

The other thing that we've had happen at hearings is there's motions and the ALJ makes a determination that some documents will be disclosed, some will not. The ALJ through Case Center can strip out the documents that aren't being produced. Or the other thing that we have done is create another section bundle on the system and put in there just the documents to be disclosed to the parties and then grant access to the parties.

And so that's the reason why we have done that, but we do not give, at any time before the hearing starts, any of the parties access to any of the subpoenaed documents

because that is -- when it's set up, it's checked off only the administrative law judge has access and then the administrative law judge has to turn on access to those documents at the start of the hearing. So that's to prevent prehearing discovery.

Mr. Shaw, you had your hand up?

ATTORNEY SHAW:

Yes. Thank you, Judge Castillo, for that explanation. Very helpful. The use of the term "relevancy" came up in the context of motions to quash already being ruled upon.

So, in light of your explanation, which I think is very helpful for my understanding, I'd like to withdraw this proposal and probably spend some more time thinking particularly about the manifestation appeals and those timelines.

JUDGE CASTILLO:

Okay. Since it's on the agenda, I also should take comments from the public because there may be other questions that come up because I think this is an important procedure and I think what one of the members -- I think the public members of the committee -- I mean, the non-attorney members of the committee had raised, I think, (inaudible) -- raised as wanting explanation because some of this is foreign to them, and rightfully so because they are not lawyers.

And I think members from the public, from based on comments in prior committee hearings, like to know more about the process and what goes on.

So, are there any further comments about Agenda Item 19C from members of the committee?

Okay. Any questions or comments from members of the public regarding 19C?
Ms. Whiteleather?

MS. BELL:

Ms. Whiteleather, your three minutes begins now.

ATTENDEE WHITELEATHER:

I appreciate the explanation from Judge Castillo. My understanding is that there is a two-step process and admission, of course, is separate from the establishment of a reasonable necessity when somebody makes an SDT application or issues it to another party. They absolutely have to establish reasonable necessity, which is a whole separate question from looking at the documents and determining. You know, if the District says I need this or a parent says I need that. That's the SDT.

And so I'm still confused and I know maybe others are confused as well why you would need determination to look at documents when you're reading an SDT and determining if there's a reasonable necessity for production of those documents.

It just seems to me to be a two-step process because I know the judges in Northern California in the district courts are different from the judges in Southern. And in Northern, they say you have to apply to seek discovery and then you get this discovery.

And this is sort of akin to that. Is there a need or a right to get the SDT and get documents? So that would be the first determination.

And then, if there is -- and I know it makes a difficulty because OAH is on a timeline and I know that causes problems, but I just want to be understanding and,

again, both fair to all parties and fair to the system because the first step is to establish reasonable necessity, and then to go through and look at the records.

So, I'm -- I have all sorts of questions. I appreciate this being brought up and will probably listen very intently to more comments. Thank you.

JUDGE CASTILLO:

OAH permits attorneys to file subpoena duces tecum on their own signature and to put the declaration for reasonable necessity in that and then parties may file a motion to quash as to whether or not reasonable necessity has been established or not.

For individuals, who are self-represented litigants, parents or students who are representing themselves, they will send a subpoena duces tecum to Sacramento to the case manager and then one of the presiding judges, or myself, will review it and then sign it and send it back to the parent for the parent or student to serve on the party for the records being requested.

Regarding motion to quash, we do sometimes look at documents, not so much for reasonable necessity, but there is confidentiality motions made; whether or not a document is protected under HIPAA. We do get motions for that. Whether or not attorney-client documentation is being disclosed in a subpoena duces tecum production. Whether or not the psychotherapist-patient privilege is applicable or not.

So, there's different -- other types of motions other than whether or not reasonable necessity exists or doesn't exist, which requires the administrative law judge to review the documents to see if a particular privilege applies or there's other statutory requirements, like the child abuse neglect reporting act is applicable, and which would prohibit by law the production of particular documents.

So, there's a whole series of different evidence code provisions, provisions under juvenile court law, provisions under federal law that may prevent the disclosure of particular types of information that the administrative law judge will have to look at and make the determination, which may require redaction of documents that has to be done by the administrative law judge or just stripping out documents and then producing them.

Any other comments from members of the public on 19C?

Seeing none, any email comments on 19C?

MS. BELL:

No email comments.

JUDGE CASTILLO:

So, Mr. Shaw, and correct me if I'm wrong, it doesn't sound like you would like a recommendation on 19C at this time?

ATTORNEY SHAW:

No, Your Honor, not at this time.

JUDGE CASTILLO:

Okay. Would any other members of the committee like a recommendation for 19C at this time?

Seeing none, we'll be moving to Item 19D. That OAH place a copy of a subpoena duces tecum form in the scheduling packet so parents know their rights. Mr. Shaw?

ATTORNEY SHAW:

Sure. Again, this is coming from a parent perspective because I have the benefit of having had been in both roles.

I think it's important that in the initial scheduling order that it also includes a copy of the subpoena duces tecum form with the instructions on how to utilize that form so parents know that that right does exist.

JUDGE CASTILLO:

And just for members of the committee and members of the public, there is discussion in the scheduling order and then the handbook that is online about the form, but as Mr. Shaw indicates, a copy in the scheduling order that is sent to parents as part of -- after receipt of the complaint either by parents or the school district, we do not include a copy of the subpoena duces tecum form in that scheduling order packet.

Mr. Shaw?

ATTORNEY SHAW:

Yeah, sorry, I had one other comment on this piece. There is -- over the years, there have been changes to those form that I, as a practitioner, have been unaware of. So, for example, in our office, we will utilize the form and our system is designed to input information into that form to make it more streamline, but I've run into situations where that form has changed and I was unaware of the change. And so I think it would be great, you know, to have that updated form. Not just for parents, but also practitioners.

JUDGE CASTILLO:

Okay. Any comments from the committee members as to Agenda Item 19D?

Any comments from members of the public about Agenda Item 19D? We have a comment from Education Not Litigation.

MS. BELL:

You now have permission to speak. Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you so much. I actually have a point of order. I sent a comment on Item 17 and it was not read into the record as the agenda indicated that it would. And so I'm asking the committee to reopen public comment for Item 17 to allow for the public comments to be read into the record, and also for members of the public to comment.

And, as a remedy, I want the vote to be retaken. Otherwise, it could be a violation of Bagley-Keene because the public was not given an opportunity to comment before the committee voted. Thank you.

JUDGE CASTILLO:

That's Agenda Item 17. That was at the last meeting, and that agenda item, I'll just read it. That OAH inform Special Education Local Plan Area, known as SELPA, when there is a due process filing involving a local education agency that belongs to the SELPA.

There was no recommendation on that, and so there's nothing for OAH to respond to. So, since that was at the last meeting, it is not -- we will not discuss and it's

not for this meeting. The agenda items for the December meeting, as stated explicitly at the end of October meeting and the the agenda that was put forth on the website said other than the introductory matters that we would start on Agenda Item 18.

Ms. Bell?

MS. BELL:

Judge Castillo, I do just want to clarify on OAH's end that we have not received any prior written comment about Agenda Item 17 from the commenter or any other member of the public.

JUDGE CASTILLO:

Since there was no vote on any recommendation on Agenda Item 17 either. Any further comments about Agenda Item 19D from the members of the public? From Education Not Litigation? And this is just regarding 19D. If you could give them permission to talk?

MS. BELL:

You now have permission. Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you. I just want to thank Mr. Shaw for his recommendations, and I hope the committee considers them seriously and implements them. So, I appreciate Mr. Shaw bringing up the issues. Thank you.

JUDGE CASTILLO:

Okay. Any other comments on 19D from members of the public?

Any email comments from 19D?

MS. BELL:

No email comment.

JUDGE CASTILLO:

Okay. Mr. Shaw, would you like to make a recommendation for Agenda Item 19D?

ATTORNEY SHAW:

Yes, I would recommend that OAH place a copy of its subpoena duces tecum form, which includes instruction -- which would include instructions for how to utilize that form, in the initial scheduling packet.

JUDGE CASTILLO:

Judge Yazigi?

JUDGE YAZIGI:

Yes, thank you. I understand that the recommendation tracks 19D for the most part, but includes -- so, it would say that OAH place a copy of its subpoena duces tecum form, including instructions, in its scheduling packet so parents know of their rights.

Did that capture it, Mr. Shaw?

ATTORNEY SHAW:

Yes, Your Honor.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

All right. Is there -- would anybody from the committee like to second this recommendation? Julie Lewin?

ATTORNEY LEWIN:

I second.

JUDGE CASTILLO:

Okay. Any discussion, comments from members of the committee on Agenda Item 19D? Marianne Grosner?

MS. GROSNER:

Thank you, Your Honor. Yeah, again, I just want to send appreciation out to Member Shaw because this is -- anything to help out the parents I think is really helpful because it is a very daunting process. So, I appreciate this agenda item as well. Thank you.

JUDGE CASTILLO:

Any other comments from members of the committee?

Okay. Any comments from members of the public about Agenda Item 19D?

Seeing no public comments, any email comments on the recommendation for 19D?

MS. BELL:

No email comments.

JUDGE CASTILLO:

Okay. With that, we'll take a vote on the recommendation for 19D. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Yes.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

The recommendation for Agenda Item 19D passes 5-0 from each committee and OAH will issue a response to the recommendation before the June meeting.

Agenda Item 20. That OAH clarify whether it uses any form to save the results of the video conference mediation. Mr. Shaw?

ATTORNEY SHAW:

Sure. So, the purpose of this request is to clarify if OAH creates any sort of internal documentation that becomes part of the actual record with respect to the outcome of a mediation that they're presiding over.

Since we've gone to virtual mediations, it's been my presumption that OAH no longer has a form that states the outcome of the mediation for parents to understand. Prior to virtual mediations when we did in-person, there was a form that OAH would

produce at the end of the mediation and there were several boxes that could be checked including that no resolution was reached as a result of the mediation that day and parties were required to sign that and it became part of the administrative record.

The reason I'm asking for clarification on this purpose is that there are two federal court cases where a parent had attempted to enforce a settlement agreement reached after a formal mediation and the Court determined they didn't have jurisdiction over the enforcement of the settlement because it was reached outside of a resolution session or a formal mediation.

And in both those cases what the Court relied upon were California Evidence Code Section 1115 through 1129, specifically Section 1125, which governs when a mediation has ended. And because there was a form that was generated that said that no resolution was reached as a result of the formal mediation, the courts have interpreted that to mean that mediation was done, even if parties had continued to negotiate after the mediation within, let's say, a 10-day window and reached a final resolution.

So, I think it's important for us to understand if any internal documentation that documents the result of the mediation does become part of the administrative record because it has a direct impact according to two federal court decisions on whether or not those settlements are, in fact, enforceable in a federal court.

And just to put this in context for parents, the IDEA does vest authority in federal courts to enforce settlement agreements so long as they were reached as a result of a resolution session or a mediation, but the language is somewhat loose in that it has allowed the courts to rely upon California Evidence Code Section 1125 for further kind of defining what that looks like.

JUDGE CASTILLO:

To respond to you, Mr., we don't keep a similar type of form for internal tracking. So, at the end of the mediation, all that the ALJ or pro tem mediator submits is mediation held period, and that's for our tracking system so we can -- that the case manager can update our case management system and just change the mediation from not held to completed, and so we can keep that for statistical purposes how many mediations we have conducted.

But we do not keep anything similar to the form that Mr. Shaw has described. So, at the end of the mediation, all that is sent is that the mediation was held and completed.

ATTORNEY SHAW:

Again thank you for that explanation. I think you've answered what the purpose of my proposal was and it will better inform me for giving some additional proposals in the next Advisory Committee meeting.

JUDGE CASTILLO:

Okay. Is there any comments from members of the committee about Agenda Item 20?

Seeing none, any comments from members of the public about Agenda Item 20? Education Not Litigation?

MS. BELL:

Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you so much. Mr. Shaw is absolutely right. I have dealt with this issue. As a parent, what happens is because OAH's process leaves up in no man's land, it makes it very confusing.

Then, what happens, the districts capitalize on that and when they go to court, they make it extremely confusing and, of course, law firms like Fagen Friedman and Fulfrost are billing by the hour, so they have a vested interest and an incentive to make the issues as complicated as possible to drag out the dispute.

So, anything OAH can do to clarify, streamline the process, align it with federal law, align it with decisions in federal court, because I've noticed that the OAH process does not move as quickly as some of these decisions are coming down the pipe.

So, I would really encourage OAH to align its process to make it clear and to keep in mind that parents, many times, are not represented and we don't have a whole team of three lawyers and six paralegals working behind the scenes who have a vested interest in making the issues as complex as possible so that our rights can be denied to access the due process system, which in California, I got to tell you, it's not working for parents. Thank you so much.

JUDGE CASTILLO:

In response to the comment and what Mr. Shaw has defined his -- the definition of when a federal district court will enforce an agreement is a matter of federal law. It is in the Individuals with Disability Education Act, and Congress in the 2004 revisions, when

they created the resolution session and when they created the enforcement provision, created a statutory provision and the US Department of Education created the enforcement in the regulations.

So, it is not something that OAH has control over. It is a matter of federal law and how it is then being interpreted by federal courts.

Ms. Whiteleather?

MS. BELL:

Your three minutes begins now.

ATTENDEE WHITELEATHER:

Thank you. I hear Mr. Shaw's statement and I know it's not about interpreting the law through the federal courts. The problem is that we've many, many times since -- it's happened before 2005 and the reauthorization, we would have a mediation that was not concluded. And state law is very clear that if your mediation continues and some of our great ALJs have come in and we're working towards something and we say, okay, let's not finish this and we go on. Then state law says within 10 days if you continue to have negotiations, those are part of the settlement -- the mediation discussions and those would be enforceable.

So, it's a change in what's being done. (Inaudible) would always say, our prior hearing office, this is done. It's concluded. Or the parties would write on the sheet of paper and I think we got that from OAH originally, the parties are continuing to discuss.

And so there was a huge difference with OAH several times. We have gone on to discuss and consider mediation after we had a settlement with an agreement that we would so and when we used to get OAH sheets. Occasionally those would say the parties are going to meet next week and talk.

So, I think that's what -- at least how I take the comment is it would be helpful to have a document that says, yes, they finished. It's done. Mediation is over. Or the parties will continue, as (Inaudible) used to do and OAH did in the original. Thank you.

JUDGE CASTILLO:

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

MS. BELL:

We do have email comment for Item 20. I will read the email now.

"Hello, my name is Rachel Tolapie, parent of two special needs students with IEPs in Southern California. Again, in the interest of transparency and collaboration, I ask that this committee please support the recommendation in Item 20. I would like to thank everyone on this committee that continues to speak for and represent our families. Your hard work is not unnoticed and is appreciated beyond any words I can express. Thank you."

And there are no further email comments for Item 20.

JUDGE CASTILLO:

Mr. Shaw, would you like to make a recommendation for Agenda Item 20?

ATTORNEY SHAW:

No, not at this time. With the information that you provided, I'd like to look closely at Evidence Code Section 1125 and come back with a more specific recommendation at the Advisory Committee meeting.

JUDGE CASTILLO:

I'll open it up to any other member of the committee if they would like a recommendation on Issue 20 -- or Agenda Item 20. Ms. Grosner?

MS. GROSNER:

Hi, Your Honor, not a recommendation, but just a question. Maybe you or Member Shaw could answer this?

Mr. Shaw had talked about a form that OAH used to produce, but that no longer does. Could I get -- I don't know this form. I was wondering if I could get some clarification on that so I can understand it a little bit better.

JUDGE CASTILLO:

I will discuss. So, when OAH conducted in-person mediations, we had a form as to the results of the mediation. Mediation held, no agreement. Mediation held, agreement, case dismissed. Mediation held, case settled subject to Board approval. Parties have reached an agreement in principle. Parties would like another mediation. And I think here was something else.

And then the mediator would have the parties sign the document and then send the document to the case manager and then our information would be updated in Practice Manager and a copy of the document kept in the system.

With going to virtual mediations on Teams and now on Zoom, not having the ability basically to write the form and then get people to sign it, then there's other logistics. I know people talk about there's electronic signatures, et cetera, but some of our parents participate by telephone. Some of our parents don't have access to different type of software that permit them to sign electronically versus the attorneys who all have access to that type of software for their practice in state or local courts.

So, decision was made just to not use a form because we could not get hard signatures on the form and just to state that the mediation was held. And that would be an indicator of what goes into the system. That the mediation was held period.

MS. GROSNER:

Thank you for that explanation.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

I just have a question as well. Is there a requirement to get hard signatures or could a parent verbally agree and have it documented?

JUDGE CASTILLO:

The issue becomes if there is a dispute later on not wanting the mediator to be a witness. Because the confidential information that's discussed and so concerns about mediator confidentiality. Because everything that is discussed in a mediation is confidential to permit the parties to have full disclosure without worrying that it will be disclosed outside of it.

Mr. Shaw?

ATTORNEY SHAW:

Yeah, just so folks understand what I'm trying to kind of unravel is to figure out how -- the interplay between what's currently being documented and whether or not, which sounds like nothing, because prior to if the mediator form says that mediation ended on that day under the evidence code, that's the end of mediation. And even if parties were still working towards -- let's say there was an agreement in principle, but it couldn't be put into a formal settlement and there was still some back and forth with respect to the language in the settlement, then even if that agreement was reached, let's say, five days after mediation because of the use of the form before, it would've been unenforceable according to these two federal court decisions.

So, hence, why I want to look closely at Evidence Code Section 1125, which governs when a mediation does, in fact, end because there are several different ways a mediation can technically be cut off and this is what the courts have looked to when making, you know, a jurisdictional determination.

And I think it's important, you know, for all parties that these agreements when they are entered into in good faith by everybody are enforceable.

So, hopefully the next Advisory Committee, I'll have some more specific recommendations if I think there needs to be something to address this.

Anything further from the committee or any other committee member wants a recommendation on Agenda Item 20?

Seeing none, we'll move to Agenda Item 21. That OAH add an explanation next to the check box for electronic service on the statement of service, also known as proof of service, that before any party may serve the other party electronically by fax or email, the other party must first provide consent to such service.

Ms. Anderson?

ATTORNEY ANDERSON:

I want to clarify that I'm referring to the statement of service that would be attached to the initial request for due process, not every other filing --

JUDGE CASTILLO:

Okay.

ATTORNEY ANDERSON:

-- that would come along down the pipe. This is already a rule that's pontified in the Code of Civil Procedure and it actually appears on OAH's website that before you file electronically or request for due process, you have to get advance approval from the other party.

My recommendation is simply to add that rule right there on the check box so that people that don't know that will then know that because it's right there on the form that they're actually using.

JUDGE CASTILLO:

Any comments from members of the committee as to Agenda Item 21?

Mr. Shaw?

ATTORNEY SHAW:

What rule are you referencing or what's the citation to that rule? So, we could look at it.

ATTORNEY ANDERSON:

Sure. It's Code of Civil Procedure 1010.6(f).

ATTORNEY SHAW:

I apologize. I wasn't quick enough. Could you --

ATTORNEY ANDERSON:

Oh, sure, Code of Civil Procedure 1010.6.

JUDGE CASTILLO:

I just want to advise people that OAH is governed by the Administrative Procedures Act and also specific regulations that the California Department of Education has promulgated regarding administrative hearings involving -- cases involving the IDEA.

And that is California Code of Regulation Title 5, Division 1, Chapter 3, Subchapter 1, Regulation 3083. So, it says, notwithstanding Government Code Section 11440.20 and the Administrative Procedures Act, which governs the service of documents, motions and other writings, the following shall apply.

So, it talks about, in Subdivision (a), service by mail and personal service, Subdivision (b), which is -- this would cover unless a provision specifies the form of mail, service or notice by mail by be by First Class Registered mail or certified mail by mail delivery service, by facsimile transmission if complete and without error, or by other electronic means as provided by regulation in the discretion of the sender.

And (c), service must be made by method that ensures receipt by all parties and the agency or nonprofit that is responsible for conducting due process hearings.

Mr. Shaw?

ATTORNEY SHAW:

Sure. So, I've seen -- or I've seen firms request the -- or make this request or argument in the past and I've often asked what authority they're citing for. So, thank you, Ms. Anderson, for providing it.

My understanding has been that service of a due process complaint by facsimile is consistent with the Title 5 regulations and I certainly wouldn't want to advocate for anything that makes it's harder for a pro per parent to initiate a Special Education due process request, as facsimile is probably one of the easiest ways of initializing that process, particularly in today's age.

JUDGE CASTILLO:

Kathleen Anderson?

ATTORNEY ANDERSON:

Then, maybe my question is for you, Judge Castillo, because on the website, the OAH website, it does set forth this rule and it does not cite the civil procedure. But it does say that if a party wants to file by fax, email, or SFT that may be done if the other party has agreed to accept service in that matter, so.

JUDGE CASTILLO:

I will say for SFT, it one way to OAH. So, unlike other core systems where you can electronically file and then have service done through that electronic file system, we do not do that.

So, the use of our electronic file transfer system is only just to get documents to OAH in a secure fashion. It's not to serve documents upon other parties. It's a one-way thing.

So, we get documents from you all and the public and then we send documents out that way through the secure system. So, we're not serving documents on parties to comply with any requirements that parties serve other parties.

ATTORNEY ANDERSON:

That may be confusing then because the website says otherwise. And I'm not really concerned about the SFT part. I'm concerned more about the email and fax part.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Thank you. I wonder if, since I'm not familiar with this, if Ms. Anderson could speak a little bit to how this may impact parents and then the friendliness that this might provide to parents through -- or in this process.

ATTORNEY ANDERSON:

Well, I think in its simplest form, the rule is to ensure that the filing goes to the right person at the district. So, I'm not sure where the parents are obtaining information for where to serve their requests for due process.

But it's important that it get to where they want it to get. I presume that they want to make sure that the decision makers and the people that need to see it, see it in a timely fashion.

But that's, you know, more (inaudible).

JUDGE CASTILLO:

(Inaudible) on the notice of procedural rights that parents get from the respective educational agencies, there is information on that form about filing a due process hearing complaint, serving it upon OAH, but also information about where to serve it upon the school districts because each forum is particular as to the school district, county office of education, or charter school.

And, then, for example, Los Angeles Unified has one where it states on its form where to serve a due process complaint, and other school districts in my review have the same language.

And that also includes how to serve it on OAH also. Mr. Shaw?

ATTORNEY SHAW:

Sure. So, the nice part about being able to serve via fax is you'll always get proof of service and you know that the document actually went through as opposed to sending something via mail.

I do understand Ms. Anderson's concern because often most school district websites, they provide a fax number to a general fax line and not necessarily to the place where they're hoping that the due process complaint gets sent.

And I think that's something perhaps that they can work with their clients on. I know LA Unified has a specific -- or has very specific instructions on where to send it so it does get to the right place.

But my experience has been, at least in my office, is we're relying upon the district's website and the information that's on that site as to know where to fax the due process to, and if it's not accurate, that's outside of our control.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Thank you. Yeah, I just -- I'm thinking about this and I can certainly understand why this, perhaps, would make it, you know, easier to ensure that you are sending it to the right person.

However, when I think about it actually in practice, I think, you know, what you call the -- you call an office and you speak with a person, right? A gatekeeper or

something else. And at what point, right? At what point do you decide, oh, well, I have enough confirmation that this is the right process. This is the right number. This is the right person. This is the right email.

And I just wonder if adding one more step without checks and balances in it is actually going to help anybody and kind of to Mr. Shaw's point. It really is imperative that school districts and other entities keep their websites up to date.

So, yeah, I mean I do understand. I'm just not sure though that in practice this would not add yet one more radical.

JUDGE CASTILLO:

Any further comment or discussion from members of the committee?

Seeing none, comments from members of the public? Education Not Litigation?

MS. BELL:

You have the ability to speak. Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you so much, and thank you for the discussion.

The committee simply needs to vote no on Ms. Anderson's proposal. Considering the source of the comment, this is coming from one of the most litigious nastiest law firms in Special Education.

So, I find it really disingenuous for the question to be posed to Ms. Anderson to give the parent's perspective. There's parent-lawyers in this meeting and those lawyers are the ones that need to be giving the perspective of the parent.

So, let's not kid ourselves that the litigators that are representing the district here have the best interest of the parents at heart. Let's not kid ourselves. They have their own agenda and they're for profit corporations and their agenda is to make money for their corporation. I don't blame them. Their agenda is not serve the public, not like OAH, and not to serve parents, like the parent-attorneys on this call.

So, I know myself that FFF is one of the worst offenders when they're serving unrepresented parents. I know many parents that receive the filing of due process from OAH, not from FFF. And then there was always an oopsies on FFF's side despite the fact that they're a multimillion dollar corporation.

And now we need to think about the districts and what they are. They're multimillion dollar government agencies. So, it is ridiculous to sit here and say that parents have to accommodate the district, make sure the right fax number is on the webpage, help the district out.

These people are getting paid six-figure dollar salaries plus benefits on the backs of the disabled. So there should be no sympathy for that kind of lackadaisical attitude that we need to accommodate the government agency. Let's remember who the underdog is here. It's parents of children with disabilities that have to deal with this system.

And Ms. Anderson, of course, is just trying to make it more complicated. Like Ms. Luby said, creating another rabbit hole. Why? Because she has a vested interest in making it more complicated. It'll give her firm more business. Thank you.

JUDGE CASTILLO:

Concerned Citizen?

MS. BELL:

Your three minutes begins now.

ATTENDEE CONCERNED CITIZEN:

Hi, thank you. In listening to this meeting, I keep seeing a general pattern here. And the pattern is how can we make this more and more difficult for parents.

I mean from the language being used, from the processes being asked out, I am just really astounded by this whole process. It's my understanding that the whole reason -- the whole point of IDEA is to be a parent-friendly process and that's why it is done through an administrative court

And yet, at every turn, you know I keep seeing suggestions for how to alienate parents and how to make it harder. And on this particular thing, I'm wondering, you know it says that the other party has to, you know, get consent before they send something electronically or via fax or email.

I mean so what happens if this passed? Let's say a parent requested consent to send something via electronically fax or email and the law firm for the school district said no. Well, why are we giving that much power to law firms for school districts on how they can receive information?

I don't even understand this. And so what? That would force the parent to actually send it, what, via certified mail or something like that and make it much more cumbersome.

You know, and as the previous speaker noted, the lawyers for the school districts and the school district staff are all funded by taxpayer dollars. There is basically unlimited money there. There's absolutely no reason why they should, you know, not have accurate information on their website or be able to take email. I mean, you know, this is -- these are very common communications in this day and age.

So, I think this should be an absolute no. Nothing should pass with this Advisory Committee that makes anything harder for parents. This is already a tough enough process and the school districts and the attorneys should not have any more advantages. Thank you.

JUDGE CASTILLO:

Any other comments from members of the public? Any email comments on this agenda item?

MS. BELL:

No email comments for this agenda item.

JUDGE CASTILLO:

Ms. Anderson, would you like to make a recommendation as to Agenda Item 21?

ATTORNEY ANDERSON:

Well, actually, I don't think I do. I've heard some interesting comments and I think I'm going to go back to my desk and rethink this.

What troubles me at this point is that here is a huge inconsistency between what is stated on the OAH website and then what is being done. So, perhaps I'll come to the

next meeting with the request that the OAH website be revised to be what is actually the practice as opposed to having something being said on the website that needs to be done, but then it's not being done. Maybe we just need to remove that.

So, I'm not going to make a recommendation today.

JUDGE CASTILLO:

Would any other member of the committee like to make a recommendation regarding Agenda Item 21?

Seeing none, we will move off to Agenda Item 22, which is A and B. So, we'll go 22A. And just to inform people that about noon, we'll be taking a 45-minute to an hour break for lunch.

So, 22A, that OAH administrative law judges rule on motions filed prior to the Prehearing Conference within a reasonable amount of time, no later than three business days after a joint motion is filed, three business days after an opposition is due, or the date of the scheduled Prehearing Conference, whichever comes first. Ms. Anderson?

ATTORNEY ANDERSON:

This proposal comes from comments made by people, you know, the parent bar, the LEA bar, arising I think out of frustration from how long it takes rulings to come from OAH on various motions. Rulings that would make a difference on whether or not we're going to go forward or not.

And everybody is preparing for hearing because the motion hasn't been ruled on, and then maybe at the last minute there will be a ruling and the hearing doesn't have to go forward and nobody had to have spent the time preparing for that hearing had that motion come back in a timely fashion.

So, these time frames are the ones that I'm proposing just so that undue time isn't wasted by anybody and hopefully saving time and trouble on both sides of the equation here.

JUDGE CASTILLO:

Any comments for Agenda Item 22A from members of the committee? Ms. Luby?

MS. LUBY:

Thank you. Yes, I wonder, again not being a lawyer, if anybody has any sort of current baseline as to how long it takes currently. Are we talking it takes three weeks and we're asking it to come down to a -- what are we talking about here for people who aren't actually involved in this process?

JUDGE CASTILLO:

Kathleen Anderson?

ATTORNEY ANDERSON:

I think it really varies, but in my experience and other's experiences that I've talked to it can be weeks. And it just depends, especially if there's been a continuance, hearings could go a little further. It can take weeks to get a ruling on a motion.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Sure. I guess my experience has been a little different. My understanding is when a motion is filed, there is a general three-day time period for a response to be filed. And then my experience has been within a matter of two to three days following those -- that three-day period, there's usually an order that's issued.

Recently, I actually had two motions that were filed -- not by me, but by the opposing party -- and they were actually ruled upon within two days before I could even formulate a response, which was super quick.

Which is neither here nor there because they were dispositive motions, meaning a motion trying to knock out an issue and it was in our favor, so I was actually kind of glad they were ruled on before I had to put pen to paper and spend time responding to them.

So, I'm trying to understand the basis of the request as well.

JUDGE CASTILLO:

Let me give this information before Ms. Anderson responds.

So, on the continuance form -- so, if you file a motion for a continuance using our form, it does state that we will, OAH will, try to rule on a joint continuance request within two business days of our receipt. So, those -- we do rule on those.

For a motion that -- a continuance motion that's opposed is treated like any other motion for the timelines, although we try to rule on those quicker, especially if there's a hearing date coming up.

Our own internal system is we try to get motions ruled upon in a week, and if it's not ruled upon in a week, the case manager is instructed to inform one of the presiding judges that it has not been ruled upon, and then the presiding judge will look at it and possibly assign it to somebody to rule upon it. So, that's an attempt to try to get rulings quicker.

The issue that does come up is motions that are filed as part of a Prehearing Conference that are filed three days before. The response would be due the day of the Prehearing Conference. That may cause issues for the administrative law judge to rule upon before the Prehearing Conference.

Or the other issue is the side may not have -- if the response is due at 5 p.m. on Friday hypothetically and the PHC is at 11 a.m., the side may not have filed a response back to the motion, especially if that attorney -- if he or she had been in mediation, et cetera, or another hearing and not able to respond until the third day. And that will lead to a ruling afterwards because there's a lot of variables that do apply.

Any other comments from members of the committee on 22A?

From members of the public? Education Not Litigation?

MS. BELL:

You have been unmuted. Your three minutes will begin now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you so much. While I recognize the issue, as I have had judges rule on motions during the hearing, so there seems to be somewhat of a gray area. I think the fix should be that OAH just provide detailed information or add a little bit more detail about their internal process, like Judge Castillo just mentioned.

Because the language? I, as a parent, I can't follow this language. It's pretzel language. I can't even digitalize a scenario or a timeline with all these different variables.

So, as Concerned Citizen mentioned, it seems like the level of complexity is increasing. So, I don't think this is helpful at all. I don't think putting in this language that if anything else and otherwise this and for this type of motion, do this. I think that's just going to make it very confusing.

I think what needs to happen is OAH just needs to put on their website something that describes the timeline that it follows, just like Judge Castillo explained, and you know, usually we know that if there's a motion filed the other party has three days to respond.

I also have seen that OAH has been pretty responsive on motions. I haven't seen one drag out for weeks. So, I don't know. I'm very uncomfortable with this proposal. Thank you.

JUDGE CASTILLO:

Tonya Whiteleather?

MS. BELL:

Your three minutes begins now.

ATTENDEE WHITELEATHER:

Thank you. And I am I agreement with Ms. Anderson completely. I have had motions to quash never ruled on -- my very first virtual hearing. We had two out of eight where there was discovery requested, and never ruled on the motions to quash.

I have a motion I was ordered to brief regarding the authority of OAH, which I thought was very well raised by our ALJ, and both sides briefed. No order. No ruling.

So, I have three in the last six or seven months where there have been motions raised or briefing ordered and we have no ruling.

And I understand everybody gets busy. We all do. And there are times that I've gone to OAH and say, please, may we have another day to respond and I'm sure the ALJs are just as busy, but when you go to the effort of responding, say, to a motion to dismiss for lack of authority or order of briefing by an ALJ, that's kind of crucial.

And in that case, I still have no response and probably will raise that in the next week or so. But I know that this has been an issue for other people. Thank you.

JUDGE CASTILLO:

Mary Kellogg (phonetic)?

MS. BELL:

Mary Kellogg, your three minutes begins now.

ATTENDEE MARY KELLOGG:

Good afternoon. LAUSD has also experienced lack of ruling on motions. In fact, we had a motion for standing, which is crucial to the outcome of a case, that was never ruled upon.

So, I'm adding my voice to this field that this is an important area that needs to be addressed because it leaves the parties without absolutely any recourse to find out what these important legal issues are and how OAH is going to treat them. It also creates problems if the party wants to preserve some rights for appeal.

So, I support this motion. Thank you.

JUDGE CASTILLO:

For comments, it's not serial, so I'm not going for Education Not Litigation, so any email? I see no further public comments. Any email comments on Agenda Item 22A?

MS. BELL:

No email comments for this agenda item.

JUDGE CASTILLO:

For 22A, Ms. Anderson, would you like to make a recommendation?

ATTORNEY ANDERSON:

Yes, and, Judge Yazigi, it's going to be pretty much exactly what's written on the agenda that OAH administrative law judges rule on motions filed prior to the Prehearing

Conference within a reasonable amount of time and no later than three business days after a joint motion is filed, three business days after the opposition is due, or the date of the scheduled Prehearing Conference, whichever comes first.

JUDGE YAZIGI:

So noted, thank you.

JUDGE CASTILLO:

Would anybody like to second this recommendation? Joshua Walden?

ATTORNEY WALDEN:

I would like to second it, Your Honor.

JUDGE CASTILLO:

Okay. Any further comments regarding this recommendation as to 22A by members of the committee? Jessica Little?

MS. LITTLE:

I just have a clarifying question. So, is it -- just based on that comment from Mary Kellogg, so is it that, because I'm hearing the time frame, but also is it that there's not a requirement that it has to be ruled on? Is it twofold that there is a ruling and the time frame of three days?

JUDGE CASTILLO:

Ms. Anderson, would you like to --

ATTORNEY ANDERSON:

I think the problem is, and as Judge Castillo pointed out on, I think it was the mediation -- I can't -- I'm sorry, I can't remember which form he pointed out that it dictated the amount of time that ALJs need to rule on a motion.

Despite that, it often doesn't happen, and I do want to say too that I appreciate the load that OAH and ALJs and staff carry. I realize everybody is really, really busy. That said, we'd like to have these motions ruled in a timely fashion so that time and resources don't have to be used preparing for a hearing that's not going to happen in that case.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Sure. I think my concern with the way it's written is the motion cutoff date is typically three days prior to the Prehearing Conference and the way this is written, it would almost be impossible for this to be complied with, particularly pro per parents. It would shorten the timeline that they would have in order to try to respond to a motion, and I think this is what Judge Castillo was articulating earlier. It would rush, you know, the ability to meaningfully read the motion or the opposition or the reply, and so on.

So, I think as this is currently written, I'm not -- I have concerns with respect to pro per parents, but even, you know, within my general practice in shortening those timelines to respond.

I think that's my only comment at this time.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Thank you, Your Honor. I was just going to comment -- or ask actually. Is there some sort of timeline or flow chart that kind of articulates all this stuff because it sounds like if it's not there, it would be something that would be helpful. Because a lot of this jargoning, motioning of this and that, and continuances, it's all very confusing from a parent perspective.

So, if there's something like that on the website now, I didn't see it, but perhaps it's there.

JUDGE CASTILLO:

Other than the continuance motion, there's no timelines. They're just discussions about filing a motion, time for a response, and then OAH will then issue an order.

MS. GROSNER:

Okay, thank you.

JUDGE CASTILLO:

And just to clarify. Then, in response to other recommendations in prior agenda items that OAH does wait three days for the response unless a response is not needed. So, the indication that Mr. Shaw that the motion is simply denied depending, we may not wait for a response back from the other side because we're denying the motion based on the information that's filed in the motion. So, no response is needed.

Otherwise, if it's contested OAH will wait the three business days for the response. And if a response is needed sooner because the hearing is coming up quicker, OAH will contact the party for a quicker response.

Anything further from the committee on the (inaudible)?

Any public comments as to the recommendation for 22A? Education Not Litigation? Sorry.

MS. BELL:

Okay, there we go. Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you. I see this as two different things because, on the one hand the comments that were being made about OAH not ruling on motions at all, OAH employees are state employees and they're supposed to rule on motions. They are ALJs.

So, if they're not complying with their job duties, then that's an issue of employee misconduct as a state employee.

So, I see this as two different issues. So, what I would encourage the parent representatives that are here to do when they come across this issue is to file a complaint against the judges for employee misconduct. They're state employees.

So, if it's part of their job duties to rule on motions, then they should be doing that and not doing their jobs is called employee misconduct.

So, I don't think this process needs to deal with that issue. I think that's an internal issue for OAH to deal with and then the language is very concerning because what's considered a reasonable amount of time. I mean if you're talking about a three-day window and you have a hearing coming up, what's reasonable?

So, it's going to be very subjective, so I think this is very problematic and I encourage the members of the committee who represent parents to vote no on this item.

JUDGE CASTILLO:

Any other comments regarding the recommendation for Agenda Item 22A from members of the public?

Seeing none, any email comments on this agenda item recommendation?

MS. BELL:

Judge Castillo, no email comments for this agenda item. I would like to take a moment to correct a statement made earlier about a written comment before we go to lunch.

I do want to acknowledge that we did receive a comment in regards to Number 17 this morning, and that was among additional items. So, I just wanted to correct that statement before going to lunch, and that's all, Judge Castillo.

JUDGE CASTILLO:

Okay. So, we'll have a vote on the recommendation for Agenda Item 22A.
Kathleen --

JUDGE YAZIGI:

Judge Castillo, if I -- sorry to interrupt. I just want to confirm because there had been some discussion back and forth that the recommendation as it stands is still as it's set forth in 22A in the agenda?

JUDGE CASTILLO:

Yes, it is. It has not been changed from Ms. Anderson making the recommendation and Mr. Walden seconding it.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

Okay. Vote on the recommendation whether or not OAH (inaudible) and response from OAH. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

No.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

No.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

No.

JUDGE CASTILLO:

Oh, can you repeat that? Is that a no, Ms. Grosner?

MS. GROSNER:

That's a no. Yes, Your Honor.

JUDGE CASTILLO:

Thank you. Sorry about that. Aileen Herlinda Sandoval?

DR. SANDOVAL:

No.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

No.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

Okay. The motion does not pass. The votes were two yes, three no in both Northern California and Southern California. So, the request for recommendation for Agenda Item 22A does not pass.

JUDGE YAZIGI:

Judge Castillo?

JUDGE CASTILLO:

Yes?

JUDGE YAZIGI:

If I may, my records have that in Northern California we had three yes and two no. However, my understanding is that it's a wash, so it wouldn't pass anyway.

JUDGE CASTILLO:

Yeah, I'm just trying to clarify. I mean we can go through it again. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Yes, okay. Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Okay. Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Okay. I'm sorry. Then I was wrong. Mindy Luby, no, and then Daniel Shaw, no. Is that correct?

JUDGE YAZIGI:

Yes, and that's what I have.

JUDGE CASTILLO:

Okay. So, I'm sorry. Thank you for correcting me. So, it's not passed because it's five -- five (inaudible) so OAH will not be issuing a recommendation on this.

Agenda Item 22B, that OAH should determine if a motion filed before the other party filed an amended complaint still applies if it does issue a ruling in a timely manner. Ms. Anderson?

ATTORNEY ANDERSON:

After a complaint is filed, sometimes there are motions that are filed and then for one reason or another, the complainant will amend the complaint and what happens at

that point is the motions that were pending that were not yet ruled on, but that were pending at the time that the original complaint was filed are not ruled on because the complaint has been amended. And so OAH then requires the motion-writer to rewrite the motion after the amended complaint has been filed.

My recommendation is that when an amended complaint is filed that OAH take a look at the motion that has not yet been written -- or ruled on to see if it still applies. And if it does, rule on it.

A good example of this would be if there is a motion to dismiss an issue over which OAH lacks jurisdiction. For example, if somebody brings a Section 504 or a 1983 claim, OAH doesn't have jurisdiction and motions usually are filed to dismiss those issues.

So, if a complaint is amended, but that amended complaint continues to have that issue, then it would make sense to go ahead and rule on the existing motion.

JUDGE CASTILLO:

Any discussion or comment by members of the committee? Daniel Shaw?

ATTORNEY SHAW:

Sure. So, my practice does extend into state and federal courts throughout the state of California. And in those settings as well when there's an amended complaint filed, any pending motion is deemed moot on the basis of the amended complaint.

So, I don't see why or how that would make any sense because the amended complaint would be the controlling complaint if the motion to amend is granted and the previous motions would then be deemed moot because those were filed prior to the amended complaint or the motion to amend being granted.

JUDGE CASTILLO:

Kathleen Anderson?

ATTORNEY ANDERSON:

Yeah, Mr. Shaw is correct. They are deemed moot and my proposal is that they not be. Because this is an administrative practice. It's not state and federal rulings and they do some things that are different, and many things are done differently at the administrative level and this is one of them that I'm proposing be changed.

JUDGE CASTILLO:

Any further comment or discussion from members of the committee?

Seeing none, going to members of the public? Education Not Litigation?

MS. BELL:

Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you so much. I'm with Mr. Shaw. I don't see how this makes any sense whatsoever. I think on this one, OAH has it right. I mean let common sense prevail. If you have an amended complaint in front of you, whatever motions were dealing with

the old complaint and who knows maybe they do apply, but it makes it so messy and so confusing because now you can potentially have a dispute between the parties as to whether or not the original motion applies to the amended complaint.

I mean, it makes no sense whatsoever, and I find it disingenuous that Ms. Anderson is now arguing for a process different than what's in federal law. She was arguing the civil code before when the argument for OAH was that -- she was saying that OAH should be doing things like the civil code mandates and the judge was arguing the Administrative Procedures Act.

So, now she's completely turned her argument around just to fit whatever narrative she has in her recommendation. So, no, I mean never mind the law for a minute. This just makes no sense whatsoever to rule on a motion when it's a different complaint in front of OAH. And I think OAH is being more than reasonable to interpret the way that they're doing it currently, which is you basically have a new complaint in front of you. So, now you're going to try to parse through and figure out which elements of the motions apply to the new complaint? It's going to be super messy for OAH.

So, I would encourage the committee to vote no on this.

JUDGE CASTILLO:

Any other comments from members of the public on Agenda Item 22B?

Seeing none, any email comments on Agenda Item 22B?

MS. BELL:

No email comment.

JUDGE CASTILLO:

Okay. Ms. Anderson, would you like to make a recommendation for OAH to consider regarding 22B?

ATTORNEY ANDERSON:

Yes, my recommendation is when there is a motion pending and subsequently an amended complaint is filed that the administrative law judge examine the motion to see if there are any issues that are still applicable and, if so, rule on those issues.

JUDGE YAZIGI:

Ms. Anderson, in substance does that track the way 22B is written in the agenda?

ATTORNEY ANDERSON:

In substance, it does, yeah.

JUDGE YAZIGI:

Okay.

JUDGE CASTILLO:

Does any committee member second the recommendation for 22B?

Not seeing any second for the recommendation, so there will be no recommendation for OAH to consider as to Agenda Item 22B being no second to it.

At this time, we'll take a lunch break. We'll take a 45-minute lunch break. Then we will go Agenda Item 23 regarding the request for second mediations.

So, we have Agenda Item 23, 24, and then public comments for 25. So we will get to the public comments after lunch break for any person who has emailed them or the public. So, for members of the public who cannot attend after lunch, my suggestion would be to please email any public comments to the address that's on our website and we will read those public comments at the end of this meeting.

So, with that, we're on lunch break and we'll be back at 12:50 p.m. Thank you, and you may stop the recording.

(Lunch Break Held Off the Record)

AFTERNOON SESSION

JUDGE CASTILLO:

It is 12:52. We are back from our lunch break. I will be taking roll to ensure that we have a quorum for Northern California and Southern California after the lunch break.

If I call your name, you can just say present or here. Kathleen Anderson?

ATTORNEY ANDERSON:

Present.

JUDGE CASTILLO:

Jessica Burrone? Jessica Burrone? Not present. Jessica Little?

MS. LITTLE:

Present.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Present.

JUDGE CASTILLO:

Nicholas Suttan? Not present? Daniel Shaw?

ATTORNEY SHAW:

Present.

JUDGE CASTILLO:

So, we still have four members of Northern California, so we do have a quorum for Northern California. For Southern California, Marianne Grosner? Marianne Grosner?

MS. GROSNER:

Oh, present, sorry. I could not hear.

JUDGE CASTILLO:

Ok. Aileen Herlinda Sandoval?

DR. SANDOVAL:

Present.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Present.

JUDGE CASTILLO:

James Lister-Looker? Not present. Sue Singh?

MS. SINGH:

Present.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Present.

JUDGE CASTILLO:

So, we have five members, okay, five members. Jessica Burrone, would you please say that you're present? You're not?

So, we do have a quorum. Ms. Burrone is showing up in the window, but she has not announced that she is present. So, I'm operating that she is not present. If we start an agenda item and she is not present, she will not be able to vote on the item.

If she returns mid, we have the option of going back and starting over or having her observe and her participating on the next agenda item when she comes back.

So, Agenda Item 23, that OAH grant parties' request for a second mediation with the same mediator if requested by parties. Kathleen Anderson?

ATTORNEY ANDERSON:

Yeah, I don't really have a whole lot to say more than that. Sometimes after there's been a mediation, both parties would like to have a second mediation and would like to file a joint request for that mediation, and if that happens, they'd like to have it branded and then work again with the same mediator.

JUDGE CASTILLO:

Okay. I'll just tell the process before we get into comments.

So, OAH has requested the party who wants a second mediation to put their request in writing and the basis for their request and to send it as a motion that will be ruled upon as a motion. And so we review those. Most people put in we'd like the same mediator assigned.

OAH attempts to assign the same mediator, but we cannot always based on availability. If the person is on leave that day, we can't assign them. If the person is in

hearing, we cannot assign them. The person may be writing a decision and the decision, because of the timelines, takes precedent. We'll ask. So, depending on those factors and other factors, we may not have the ability to assign the same mediator.

Additionally, if the mediator was a pro tem, the requirement is that all assigned mediations first be assigned to state employees, state administrative law judges. If the state administrative law judge is not available, then it would be assigned to a pro tem mediator for all our mediations.

So, that's generally it, but we try to assign the second mediation. First, our ALJs prefer that, but logistically it may not be possible.

Daniel Shaw?

ATTORNEY SHAW:

Thank you. So, I like the spirit of this proposal. I had a suggestion for how it would be framed that might be a little different based on my experience of recently being denied a joint request for a second mediation.

The basis for the denial was that the desire to mediate didn't constitute good cause, for which I believe the desire to mediate should, particularly for a second mediation, always constitute good cause.

So, I was toying with some language for Ms. Anderson to maybe consider since this is her proposal. But what I wrote out was a joint second request for mediation shall be granted and, if need be, constitute good cause to continue hearing dates. The OAH will employ best efforts to assign the same mediator if feasible.

JUDGE CASTILLO:

I see that Ms. Barrone is back. Ms. Barrone, since you were not present, we started this. You can observe, but since you were not present, we started --

DIRECTOR BURRONE:

And my apologies, Your Honor. I wasn't able to log back in, so I had to go run and get my tech.

JUDGE CASTILLO:

Okay. It's okay. I understand. You will be able to participate in the next Agenda Item 24, but you can listen on this.

Is there any other comment or, Ms. Anderson, a response back to Mr. Shaw's, I guess, reframing of the agenda item?

ATTORNEY ANDERSON:

Could you repeat that, Mr. Shaw, a little slower? I was trying to write that down. I think you've got some good ideas there. I just want to make sure I have them all.

ATTORNEY SHAW:

Sure. A joint second request for mediation shall be granted and, if need be, constitute good cause to continue hearing dates. The OAH will employ best efforts to assign the same mediator if feasible.

ATTORNEY ANDERSON:

Okay.

JUDGE CASTILLO:

Any further comments from members of the committee? Ms. Grosner?

MS. GROSNER:

Thank you, Your Honor. I was just thinking that this could potentially just maybe create a dispute between the parties as to whether or not the same mediator should be assigned. So, is that going to work into this?

JUDGE CASTILLO:

I will just tell everyone, we sometimes get requests for second mediation and the request is another mediator be assigned.

JUDGE YAZIGI:

Your Honor, may I add to that? So, is it possible that we add a statement in there should the parties not request an alternate mediator or a different mediator?

JUDGE CASTILLO:

Okay. We will discuss that further as we get to the -- if there's going to be a recommendation for that. But for right now, we're just talking generally about the topic, but we'll get back as to the recommendation.

Are there further comments regarding this agenda item from the committee?

Any comments on this agenda item for second mediations from the public?
Education Not Litigation?

MS. BELL:

Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you so much. This is -- this is another one of those pretzel issues. I wholeheartedly agree with Ms. Grosner's comments that now there's a potential dispute between the parties about whether or not the same mediator will participate and I think it really ties OAH's hands to do that. It's really out of the scope of what OAH currently does. I've never seen this before.

I mean, I agree with the concept that Mr. Shaw brought up of having as many mediations as possible because the whole point is to try to resolve the dispute and not go through a hearing.

But I'm just really concerned about the whole convoluted rationale behind this. And I really would like to understand who is compensating the attorneys for districts that are here today. Because I doubt that they're being -- just volunteering their time, as us parents are.

I think the public has a right to know that since this is a public meeting of a state agency. So, who exactly are they representing? I mean, that's -- we first have to understand what entity are they representing? Are they here on behalf of a specific client and then, you know because this is very confusing. Their role is very confusing.

And, as is the proposal for the second mediation, although in concept I would agree with that language, but I think this item should be tabled to better understand and for the committee digest the recommendation a little bit better. I'm leaning towards

Mr. Shaw's recommendation. I think his is cleaner, although the caveat at the end still gives OAH the discretion, and I think OAH should have the staffing discretion.

So, I think the judge has been very reasonable in explaining how the process works. It is concerning that parties that are requesting a second mediation are not getting it through OAH. Thank you.

JUDGE CASTILLO:

Tonya Whiteleather?

MS. BELL:

Your three minutes begins now.

ATTENDEE WHITELEATHER:

Thank you. First of all, I tend to believe that after reading the federal and state law that the right to mediation is sort of sacrosanct and I have been in the middle of due process when opposing counsel has said to me, gee, let's settle. And thankfully the ALJs have said yes, and we go out and we settle because everybody knows that sometimes things arise in the middle of hearing that could be bad for either side. But mediations -- and I've then had resistance from some ALJs that say they won't allow a subsequent mediation. So, I think making sure that the right, if both parties wish to return to mediation, is clear to all is very important because that saves time. It saves money. It makes the process easier if the parties can settle.

The other is that we used to have evaluation sheets and we would evaluate our ALJs. I have twice sent in a complaint. I actually had one ALJ that laughed -- literally laughed at the parent. I had one -- and I said, I have a problem with what you're doing.

She said, it's all right. I'll just turn off my video and you don't have to look at me anymore. And I try to be respectful because I think we all deserve respect, even on opposing sides. But in that case where the ALJ was laughing at the parent, we both wrote in and OAH assigned us a second ALJ.

So, if we had some manner, some ability to make a comment, then certainly I think that if the previous mediator were proposed and one party had a problem with a mediator, that could be raised. It's fair for either party to say, no, I don't want to go back to mediation.

But for the most part, when we've returned, it's been very, very helpful to have an ALJ who already has information, knowledge, and an understanding of the background. It speeds the process up. Thank you.

JUDGE CASTILLO:

EV?

MS. BELL:

EV, your three minutes begins now.

ATTENDEE EV:

I agree with Mr. Shaw's comments on the extension of a second mediation. I also agree with the comments from Education Not Litigation. As a parent of children who have IEPs, if I want to, and my attorney want to, continue the mediation, I think we should be afforded that opportunity and not just a blanket denial because we've had one, for whatever reason.

I'm concerned about the language. I think it needs to be a little bit more clear so that it is fair to the parents of the students that are requesting the mediation.

I agree with the Education Not Litigation that we should extend it and maybe work on the language, and it's something to continue for the next session. Thank you.

JUDGE CASTILLO:

Concerned Citizen?

MS. BELL:

Concerned Citizen, your three minutes begins now.

ATTENDEE CONCERNED CITIZEN:

Thank you. I guess I am a little confused because this makes it sound like OAH is refusing to grant a second mediation and I think from what the previous callers have said, I don't understand why that would be.

The whole -- this whole process is supposed to be, you know, parent friendly and if both parties want to have a second mediation, I don't understand why OAH would interfere with that, number one.

Number two, I am a little bit confused about how you would determine if both of the parties want the same mediator and whether -- you know, what if they don't want the same mediator. In my experience, I think OAH has shown bias towards school districts and school district attorneys, so I'm very concerned that the mediator that the school district attorneys want would be provided.

And I also have been in mediation where the ALJs have been absolutely rude and tried to kick out advocates that are accompanying parents. And there is nothing in the law, that I have seen, that I know of, that says advocates cannot be in a mediation.

And so, I think that there are a lot of problems with mediation because it is not public record and I think that OAH really needs to look at all of the comments that are made through those mediation surveys, if those are still being done.

You'll see that many, many parents think that the whole mediation process itself is biased because the ALJs are very biased towards the school districts. And, in one of those ways, they are not even allowing advocates to attend with parents.

So, I think that this is a little -- again, this is just kind of confusing to me. I don't know why a second mediation would not be granted if both parties want it. That kind of seems like a no-brainer to me. Thank you.

JUDGE CASTILLO:

Ms. L?

MS. BELL:

Ms. L, your three minutes begins now.

ATTENDEE MS. L:

Thank you. I am very much like the other members who have made comments. I agree with Mr. Shaw recommending additional mediations.

I, too, had the misfortune of going into a mediation and I did notice that OAH staff do side with districts and I have seen even them being disrespectful in some ways.

I just hope that you realize the amount of the stress that this brings to the parents because, not only, we have to fight with districts to get services for our students, now we have to argue with an OAH member that is rude to us.

I am very concerned again on the participation of some of the persons at this meeting because I have been sued multiple times by a lawyer that is participating right at this meeting and it's very, very alarming that this agency is part of this committee. I am alarmed because they are backing districts and fighting and arguing with the school and the school parents and it's very, very alarming.

So, I, too, would like to know who is paying them. Are districts funding the participation of the lawyers at these meetings or are they just doing this because at the end they will get an outcome into their favor? And I am very alarmed with that.

Thank you for this time. Thank you.

JUDGE CASTILLO:

Seeing no other public comments on this agenda item, any email comments?

MS. BELL:

No email comments.

JUDGE CASTILLO:

Ms. Anderson, would you like to make a recommendation concerning Agenda Item 23?

ATTORNEY ANDERSON:

Sure, I would. Okay. A joint request for a second mediation shall constitute good cause and be granted and OAH shall employ best efforts to assign the mediator jointly requested by the parties.

JUDGE CASTILLO:

Do you have that, Judge Yazigi?

JUDGE YAZIGI:

It's slightly different from how we started out, so if I can just --

ATTORNEY ANDERSON:

It is.

JUDGE YAZIGI:

-- take a moment to make my notes?

ATTORNEY ANDERSON:

Sure.

JUDGE YAZIGI:

Because it's not necessarily the same mediator. It's the mediator that is jointly requested by the parties?

ATTORNEY ANDERSON:

Correct.

JUDGE YAZIGI:

All right. So, Ms. Anderson, I'll read what I have and you can tell me how I did.

A joint second request for mediation shall be granted and constitute good cause if needed to continue hearing dates. OAH shall make best efforts to assign the mediator jointly requested by the parties, if feasible.

Does that capture your recommendation?

ATTORNEY ANDERSON:

Yes.

JUDGE YAZIGI:

If I made a mistake, let me know.

ATTORNEY ANDERSON:

I think we're good.

JUDGE YAZIGI:

Okay, thank you.

JUDGE CASTILLO:

Anybody would like to second the recommendation or comment on the recommendation? Mr. Shaw?

ATTORNEY SHAW:

Yeah, my comment would be to the last sentence. I think it should read if jointly requested by the parties, the OAH will employ best efforts to assign the same mediator, if feasible.

I think the way it's currently written is saying that if parties want a particular person to mediate that they have the ability to request that person. Maybe that's what the intent was, but I think it was a little different than what I originally understood. So, maybe clarification on that piece.

And I also think that might be somewhat problematic based on what Judge Castillo said, where I think they're required to utilize, I think he said, state employees prior to pro tems. And so there's -- I assume there might be a rationale as to why that might be -- why that not be feasible. Because if both parties want a pro tem and the first mediation was conducted with an ALJ, but ALJs are available, that might be an issue.

JUDGE CASTILLO:

Ms. Anderson?

ATTORNEY ANDERSON:

Yeah, I did modify my recommendation a little bit based on comments by members of the committee and the public about the fact that sometimes the same mediator is not wanted, but both parties do want a second mediation.

So, I feel that saying that OAH shall employ best efforts to assign the mediator jointly requested by parties encompasses either they're requesting the same mediator

or requesting somebody else, and employing best efforts to me gives OAH the flexibility that if the person who's being requested is not appropriate for whatever reason, then OAH will not grant that person.

JUDGE CASTILLO:

Mr. Shaw?

ATTORNEY SHAW:

Sure. I think I hear what you're saying. I think the way it's written, or at least what I heard, seems to say that if parties jointly request a different mediator, the OAH will consider that, which I think is a little different than trying to keep the same mediator. Maybe I misheard it because I didn't write it down.

JUDGE CASTILLO:

Ms. Anderson?

ATTORNEY ANDERSON:

I'm really open to (inaudible) on the wording, but my wording is that the parties will jointly request a mediator. So, it could be the same mediator, which was my original proposal, or it could be some other mediator that they both prefer and I changed it based on the comments several people made. And I think by saying jointly requesting a mediator, that's broad enough to encompass either the same mediator or somebody else that they both would like to have.

JUDGE CASTILLO:

Ms. Grosner?

MS. GROSNER:

Thank you, Your Honor. I think that this agenda item is evolving and growing in a positive direction, but at the same time, it almost feels like we should probably table it because the language on it is seemingly quite different than the original agenda item.

JUDGE CASTILLO:

Ms. Luby?

MS. LUBY:

Yeah, I would agree with Ms. Grosner for sure. And I think what we're having -- as I'm sort of interpreting it, right? That either party could request. We're not talking about the same as the previous, right? So, there's a lot of really tiny little words in here that, at a larger view seem fine, but when we really drill down and understand the meaning of them, it changes it and it can change it drastically.

So, I feel like we either need to spend a good amount of time here figuring out this language and get really clear or maybe table it and have a couple of different suggestions coming forward for the next meeting.

JUDGE CASTILLO:

Ms. Anderson, would you like to go forward with your recommendation as stated or make changes to it?

ATTORNEY ANDERSON:

No, I'd like to leave it the way it is.

JUDGE CASTILLO:

Okay.

ATTORNEY ANDERSON:

Or the way that Judge Yazigi has it.

JUDGE CASTILLO:

Okay. Is there any second to the recommendation? Mr. Walden?

ATTORNEY WALDEN:

Your Honor, I'll second the recommendation.

JUDGE CASTILLO:

Okay.

JUDGE YAZIGI:

Just for the sake of clarity, the version that I have, if I may, Judge Castillo, just because there's been some back and forth. The version that I have is what Ms. Anderson's most recent recommendation was, which is it doesn't have to be the same mediator. It could be, but it could also leave room for another mediator.

So, as it stands I have, a joint second request for mediation shall be granted, and constitute good cause if needed to continue hearing dates. OAH shall make best efforts to assign a mediator jointly requested by the parties.

How did I do? Okay.

JUDGE CASTILLO:

Okay, and that's what we have seconded from Mr. Walden. So, we will take a vote. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

No.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

No.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

No.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

Okay. We have three yes votes and one no vote in Northern California, three yes votes and two no votes in Southern California. So, the recommendation passes.

Agenda Item 24, that OAH should write Advisory Committee language -- let me try again. That OAH should write Advisory Committee agenda in language and using terms that are understandable by the general public. Ms. Anderson?

ATTORNEY ANDERSON:

Yes, I proposed this one in response to more than one comment actually at the June meeting by members of the public, who were expressing some frustration, understandable frustration, that the agenda may include terms or lack of explanation so that everybody understands what the agenda consists of and the different items on the agenda.

And so, I am proposing that it be written with more clarity so that all people involved can understand what it is saying.

JUDGE CASTILLO:

Any comments from members of the committee? Ms. Barrone, since you were present at the beginning, you may participate in this agenda item. So, any comments from members of the committee on this agenda item?

Any comments from the public? Concerned Citizen?

MS. BELL:

Concerned Citizen, your three minutes begins now.

ATTENDEE COCERNED CITIZEN:

Thank you. Well, as you know, I had asked about Agenda Item 19, the subpoena duces tecum form, which I had no idea what that was. So, there are other things in there, you know the prior item referred to settlements by decision. I'm not sure if that's different from a regular settlement.

So, in looking at this agenda, really what these items were going to be, and it would've helped me to prepare just, you know, as a parent as a layperson, to really understand what these issues are going to be about and help me prepare questions or comments.

Just this whole process is just -- seems to filled with legal jargon and I'm very, very concerned that that's not what this is supposed to be. It's my understanding that this whole process is supposed to be friendly to parents and parents are supposed to be able to represent themselves or have advocates help them.

At every turn, there are roadblocks and this is becoming like more and more of a legal system where it's all up to the attorneys and the judges and the parents are just left in the dark and they are the ones the system was designed for. They are the ones who have children who are not being educated and they are the ones who have -- you know they have to take care of their kids with disabilities. They have jobs. They have all of these other things that they're doing.

We don't have time to be looking up all of this legal jargon and this Advisory Committee is supposed to be friendly to the public and parents. So, yes, I absolutely think that all of these terms should be spelled out and defined and make it so that this is friendly to the public. Thank you.

JUDGE CASTILLO:

Education Not Litigation?

MS. BELL:

Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you. While the concept sounds great, I think the devil is going to be in the detail because who is going to decide what parent-friendly or what layman's terms is and the language.

And I find the proposal to be, you know, or the proponent to be disingenuous given what just happened with the previous item, which the language was never made available to the public.

And I get it that the committee should deliberate and change proposals, but not drastically alter it in a totally different way so that the public wasn't even informed and didn't have notice on what the item was about because the recommendation that ended up passing was completely different from what was proposed.

So, I find Ms. Anderson's proposal now to be completely inconsistent with what she did with the previous item in the name of helping parents. And, again, I want reality to hit this committee that law firms like FFF do not represent parents. They're not acting on behalf of parents.

So, for them to be taking that position that, oh, we're here to be responsive to the public, I mean it's completely bogus. Let's have a reality check here.

So, the people here that are representing parents, make sure you advocate for us aggressively and don't just go along to get along because it's easier to agree with -- you know, with what the big dog in the room is proposing. Thank you.

JUDGE CASTILLO:

Ms. L?

MS. BELL:

Ms. L, your three minutes begins now.

ATTENDEE MS. L:

Thank you again. I concur with the previous comment. The language, it's very difficult. Some of us don't have the knowledge, nor the education I guess, to understand most of the legal jargon, but who is going to determine what is parent-friendly. It's alarming. I am concerned about that.

And once again, you're here to help our students. I mean this problem could be well solved if districts were given the appropriate services. We wouldn't have to go to

mediation. We wouldn't have to litigation. We wouldn't have to argue with anybody if districts did what they are supposed to do. And SELPAs did what they need to do.

However, they don't. And what happens? Legal firms represent them. And what happens? The parent is pushed to the end, again the wall, to try to find representation. Most of the times is not able to get it or gets whatever is available based on budget. It's very difficult.

This is a very difficult to most of us parents that have to deal with this during our -- during the entire educational life of our students.

So, I am very concerned and I would like to add there's also a need for this information to be in other languages. I have a good friend of mine who is Spanish-speaking only. I cannot believe how grossly districts take advantage of these parents because they don't know legal terms, but don't know what the districts are doing and they don't understand the process, and they have no idea what's going on in the back. Thank you.

JUDGE CASTILLO:

EV?

MS. BELL:

EV, your three minutes begins now.

ATTENDEE EV:

Thank you. I agree with the previous speakers. Anything that Ms. Anderson presents to me is suspect. Just because the attorney firm that she represents.

As a parent of children that are both -- I have three children with IEPs. It's a constant battle just to get minimal accommodations and services. And then to come here to a committee that is supposed to be looking at ways to make it better and more accessible to parents and to see someone from this same law firm here, one only knows who's she's representing and it's not us.

I'm really concerned about the language that might be -- I mean as much as we need and want it to be clearer, we're not ignorant. We just aren't attorneys. So, we need it at a level that a layperson would understand. But one word can change the entire context and meaning and even if we're looking at legalese could change the conditions of many things.

So, I'm very concerned who's proposing it and who would be coming up with the language and that it is appropriate for a layperson to be able to understand. It's very upsetting to see this committee and who is on it. I think you need to have more people, more parents on here, and maybe less attorneys.

I live in the Central Valley, and I don't see anyone here representing the Central Valley. We're often left out of everything. I understand you have Northern and Southern, but you don't represent Central Valley and I want to make that point. That we are a little bit different from Northern and Southern and you need to put -- start including us more into your committee meetings. Thank you.

JUDGE CASTILLO:

Seeing no more public comment, any email comment?

MS. BELL:

We have one public comment via email from Agenda Item 24 from PIB. I will go ahead and read it now.

"Number 24, using language the public can understand. OAH should use everyday language or at least define each of the legal terms that are thrown around at these meetings. This is not supposed to be a meeting between attorneys and judges. This is a public meeting and one that many parents attend to learn the process and to provide recommendations.

Today's agenda includes the following terms that should be defined for laypeople:

- SELPAs and their roles,
- orders versus decisions,
- settlements by decision,
- subpoena duces tecum,
- the IDEA meant for due process to be a parent-friendly process.

But it has turned into a major legal system where parents are ignored and treated as if they are stupid for not knowing very specific legal terms.

OAH and this Advisory Committee needs to do a better job of including parents and taxpayers who do not have a legal background."

That is the end of the comment.

JUDGE CASTILLO:

Thank you. Ms. Anderson, would you like to make a recommendation as to Agenda Item 24?

ATTORNEY ANDERSON:

Just how it's written on the agenda that OAH should write the Advisory Committee agenda in language and using terms that are understandable to the general public.

JUDGE CASTILLO:

Okay. Ms. Lewin, I saw that you had your hand up. Did you want to make a comment?

ATTORNEY LEWIN:

Yes, I just want to say that the public's comments are well taken. Some committee members are compiling the agenda list. I was responsible for Southern California's agenda item's list. I should've taken it upon myself to make it more clear to the public. I am a parent, but I am also a parent attorney representative and I hear you and I want to apologize. And I think it is a good recommendation and your comments are well heard.

JUDGE CASTILLO:

Mr. Shaw?

ATTORNEY SHAW:

Yeah, following what Ms. Lewin said, I hear you folks as well. Sometimes it's easy for us to forget the audience because we're so used to talking about these things as attorneys and professionals and I know that goes for both sides.

I just had a thought about the way this proposal was worded listening to folks. So, I just thought I'd put it out there, for consideration by Ms. Anderson because it's her proposal. This is my thought after hearing folks.

That OAH should write the Advisory Committee agenda defining legal terms and processes utilizing language that is understandable by the general public.

JUDGE CASTILLO:

Ms. Anderson?

ATTORNEY ANDERSON:

That sounds like a good revision.

JUDGE CASTILLO:

Okay. Judge Yazigi, do you need that repeated?

JUDGE YAZIGI:

Yes, please.

JUDGE CASTILLO:

Could you repeat that, Mr. Shaw?

ATTORNEY SHAW:

Sure. The OAH should write the Advisory Committee agenda defining legal terms and processes utilizing language that is understandable by the general public.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

Ms. Luby?

MS. LUBY:

Thank you. I would be happy to connect with any of the public that is outside of my specific small circle considering how large California is. I don't know if there's an avenue in which the parents who do attend can connect with us. I'm happy to share my email or my phone number.

But I want to -- I do feel like they have some really good ideas that we could then propose as recommendations. I don't know how the public hears about how to connect with us in order to formulate our proposal thoughts.

JUDGE CASTILLO:

The one thing -- I'm not shutting this off. If you do not mind, Ms. Luby, I would like to discuss this also with you offline and then internally about there's always confidentiality and other things. And so, I don't want to shut it off, but I just want to figure out a way that it can be done in the communication because you do represent all of you parents, students, et cetera, and to get that communication going, I think is very

important, as you just discussed and I think as members of the public. But otherwise in a fashion that -- in today's world that confidentiality and other things can be protected also. But also you can have the communication going.

Jessica Little?

MS. LITTLE:

Thank you. I don't know if this is a completely different recommendation, but I agree with the clarifying the language and defining the language, but what was also helpful for me was at the beginning of each agenda item, Judge Castillo, when you explained the process and --

So whatever the current process is, whatever the actual terms are, that was also very helpful. So, I don't know if there's opportunity to word the agenda in a certain way, but also at the beginning of an agenda item to somewhat define the current process and state definition of terms as well. Or if that really changes this agenda item as a recommendation?

JUDGE CASTILLO:

Ms. Anderson?

ATTORNEY ANDERSON:

I think that the revision -- the revised recommendation that includes the language from Mr. Shaw about defining legal terms and the processes being used, I think that sounds like it encompasses what you have in mind and rather than being specific about at the beginning of each agenda item.

I think I'd really like to kind of put the ball back in OAH's court and let them -- let OAH decide, you know, should it be at the start or should it -- you know, where this information should be so that it is most useful.

So, I think I'd like to leave the recommendation as it is.

JUDGE CASTILLO:

Anything further, Ms. Little? Sorry, (inaudible) Ms. Luby had requested.

Any (inaudible) on recommendation for Agenda Item 24? Education Not Litigation?

MS. BELL:

Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you, and I appreciate the comments by Ms. Luby. I think if you're going to sit on an advisory committee that's advising a state agency, the members of the committee should list their email address. If they don't want to list a personal one, maybe OAH can assign one for them. But this goes to an issue of transparency.

Plus referring to the changes on Agenda Item 24, I don't think it gets you to where you want to be because this whole agenda reads like a due process complaint with list of issues. If you really want to solve the problem, you will look to what the business community does and what marketing strategies of products, how that's approached.

Basically you create a focus group of the stakeholders. So, you're really going about this problem completely the wrong way. I agree with the overall arching concept that, yes, we want to make it parent-friendly and, yes, we want to simplify the jargon and, yes, we want to give parents an equal footing.

But, turning the ball back on OAH is not going to get you there because OAH is the one that is writing the agendas like a due process complaint. So, you really need the stakeholder group of parents because supposedly those are the people that you want to serve and you want to accommodate, that's called a focus group and it was brought up at the previous meeting to create some kind of parent stakeholder group to have these discussions. So, this problem is not going to be solved through OAH.

JUDGE CASTILLO:

Thank you. Concerned Citizen?

MS. BELL:

Your three minutes begins now.

ATTENDEE CONCERNED CITIZEN:

Thank you. As I said previously, I do believe that this agenda is filled with jargon, but I really like what the last caller had to say because in looking about it, I'm sorry, I don't mean to offend attorneys, but leaving attorneys to be the ones to come up with the layperson's definitions might be problematic.

So, I can see that. So, I do think that we need this to be in layperson's terms so that more parents even want to attend this advisory committee. Because, I'm telling you, just looking at this agenda, most parents are not even going to know what the heck these items even mean.

So, I like the last caller's suggestion that we do look to making this -- making the agendas more parent-friendly. But in order to do so, we really have to listen to parents and we have to get that information from laypeople and I don't think we can expect attorneys and judges to kind of get out of that mindset and really understand the language from the point of view of parents.

So, definitely having some kind of parent focus group or parent committee, something like that, I think that would be really, really helpful. Thank you.

JUDGE CASTILLO:

Thank you. Ms. L?

MS. BELL:

Ms. L, your three minutes begins now.

ATTENDEE MS. L:

Yes, thank you again. I concur with the previous callers. I am very concerned and alarmed that most of the members of this committee are lawyers rather than parents.

I mean I know a couple of friends of mine have tried to run and get some of these positions to assist your organization and they were denied. I don't understand why most of the lawyers got these spots.

Anyhow, based on the suggestion, I also recommend that you listen more to parents because really -- really at the end, if we go to a hearing, if we go anywhere, even if we have representation, we need to have a very clear understanding of what we're agreeing to. Most of the time, that information is not clear to us. It's not clear to us.

So, we need to have much clearer wording, much clearer explanation, and this needs to be not done by school district lawyers. It needs to be done by parents or neutral parents, so it can help us better. Thank you.

JUDGE CASTILLO:

Thank you. Seeing no further public comment, any email comments?

MS. BELL:

No further email comments. We already addressed the one for 24 that we had.

JUDGE CASTILLO:

Okay. Seeing that, we will take a vote. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

Your Honor, I wanted to actually ask a question, but since we're voting, I guess I'll have to say no because I still had some questions.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

This measure passes and OAH will issue a recommendation in response.

JUDGE YAZIGI:

Who was the second on 24?

JUDGE CASTILLO:

I think Mr. Shaw was.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

Was there -- I thought we had a --

UNIDENTIFIED VOICE:

I think that may have gotten skipped, Your Honor.

ATTORNEY LEWIN:

I can second.

JUDGE CASTILLO:

Okay.

ATTORNEY ANDERSON:

Thank you.

JUDGE YAZIGI:

And who spoke up?

ATTORNEY LEWIN:

Julie Lewin.

JUDGE CASTILLO:

Julie Lewin.

JUDGE YAZIGI:

Thank you.

JUDGE CASTILLO:

I'm sorry. I thought we had a second to it. So, we do have a second. That is all the agenda items. The public comment -- I'm sorry. I'm just making sure (inaudible).

So, the public comments, this is the time set aside for public comments. We'll be first going from the public attendees, three minutes, similar discussion time permitted, and then after the public comments for Zoom attendees, we'll be reading the email comments.

So, Education Not Litigation?

MS. BELL:

Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you. I first wanted to say that point of procedure, you can't really take the second after you already have the vote. So, I think that's completely wrong.

The other thing I wanted to mention --

JUDGE CASTILLO:

(Inaudible) -- no, we will go then -- since we have a second, then we'll just go back and take a vote to make sure that we're there.

So, we're going back to Agenda Item 24. Judge Yazigi, could you please read the recommendation?

JUDGE YAZIGI:

Recommendation for Agenda Item 24. That OAH should write the Advisory Committee agenda defining legal terms and processes using language that is understandable by the general public.

JUDGE CASTILLO:

Would anybody like to second that recommendation?

ATTORNEY LEWIN:

I second the recommendation.

JUDGE CASTILLO:

Ms. Lewin did, and we'll go through the vote again. Kathleen Anderson?

ATTORNEY ANDERSON:

Yes.

JUDGE CASTILLO:

Jessica Burrone?

DIRECTOR BURRONE:

Yes.

JUDGE CASTILLO:

Jessica Little?

MS. LITTLE:

Yes.

JUDGE CASTILLO:

Mindy Luby?

MS. LUBY:

Yes.

JUDGE CASTILLO:

Daniel Shaw?

ATTORNEY SHAW:

Yes.

JUDGE CASTILLO:

Marianne Grosner?

MS. GROSNER:

No.

JUDGE CASTILLO:

Aileen Herlinda Sandoval?

DR. SANDOVAL:

Yes.

JUDGE CASTILLO:

Julie Lewin?

ATTORNEY LEWIN:

Yes.

JUDGE CASTILLO:

Sue Singh?

MS. SINGH:

Yes.

JUDGE CASTILLO:

Joshua Walden?

ATTORNEY WALDEN:

Yes.

JUDGE CASTILLO:

This measure passes. We have five yes-votes in Northern California and, in Southern California, four yes-votes and one no-vote. So, it passes and OAH will issue a recommendation.

Now, we'll go to public comment, and with Education Not Litigation. This will be a fresh three-minute time frame for this person.

MS. BELL:

You have been unmuted. Your three minutes begins now.

ATTENDEE EDUCATION NOT LITIGATION:

Thank you, Judge, and thank you for making yourself available for the entire day. I know it's a long day, so thank you for accommodating that.

I wanted to mention that many parents here have had to resort to making our comments anonymously because districts are using this meeting to identify us and target us, and public comments are being raised in due process.

This happened to me. It's happened to several of my friends, where when they go to due process, the district is using their public comments against them.

So, that's why in the parent community people don't want to attend these meetings because they know that the districts and the SELPAs are watching as a targeting tool.

I also wanted to call attention to a website, KPS4parents.org, K-P-S, number four, the word "parents", dot, O-R-G. And they published the OAH Special Education

Accountability Report. They pointed out that OAH has a history of being biased against parents and ruling in favor of districts in the vast majority of cases.

The report points out that because OAH is a division of the Department of General Services, which is the business unit of California, OAH is really incentivized to save the state money and it does that by finding in favor of school districts so that they don't have to pay for Special Education services.

And, therefore, does not meet the required standards within the Individuals with Education Act to provide impartial mediators and hearing officers for students with special needs.

I would continue to urge OAH to verify whether or not attorneys representing districts have been duly authorized by their school boards. They're coming to OAH to represent that the district is onboard.

What we're finding in my area is that the school boards have no idea. The process is being done underground and these attorneys that are working with SELPA administrators and school district administrators, they are doing so -- they're coming to OAH to file due process without the school board ever approving that.

The other thing that I wanted to point out to OAH is not to be used as a tool by district lawyers, who employ tactics like sanctions, and FFF does this repeatedly, where they will file sanctions against the parent attorney as a means to discourage representation, so that they have an advantage in litigation. And --

MS. BELL:

I have muted the commenter. The three minutes is up.

JUDGE CASTILLO:

EV?

MS. BELL:

EV, if you still wanted to make a comment, I have you unmuted. Your three minutes will begin now.

ATTENDEE EV:

Thank you. Thank you, Judge Castillo. In looking at the purpose of the committee, it's to receive recommendations for improvements to the Special Education hearing and mediation process. However, as a parent, I'm very concerned that when I look at who the members are, there is only one member that is a parent-only member out of 12. All the others are either attorneys or quasi/advocate attorney and not specifically a parent.

So, I feel like that limits our input. I don't know how we're to get that input to you and how you're going to have improvements that actually address the issues that we are in the front lines facing every single day.

When I see certain attorneys here that I know belong to agencies that are paid with taxpayer-funded money, specifically to keep our children from receiving those services and to keep us from having a voice in due process, and they are members here.

I have the question of are they here as a volunteer or are they getting paid to be here? And I think that speaks to an issue of transparency. I'd like to know about all the members. Who are here as volunteers and who are being paid? And what agency is paying them to be here at these meetings? Thank you.

JUDGE CASTILLO:

Thank you. Ms. L?

MS. BELL:

Ms. L, your three minutes begins now.

ATTENDEE MS. L:

I just have to say I agree with both parents that spoke earlier. We, parents, are very concerned with retaliation. It's a fact. It's a known fact that districts go after our heads as soon as we raise a question, as soon as we start asking in an IEP why something has not been going on, why this is not happening. As soon as we start putting compliance complaints, the districts start going after us. And, of course, they hire lawyers to go after us as well. And they retaliate. It is obvious.

So, it's very alarming and scary to come here for most of us that are parents because we know most of the lawyers that are suing our children are here and being members.

And, as stated before, I have friends that have applied to these positions and they haven't gotten it and these have gone to lawyers instead.

So, if you want to make a change and you want to support our children, you need to start by making and ensuring this agency, this committee, has more parents and less lawyers. Because we need to make sure that you are ensuring that we protect those children. Because lawyers have a hand and they go to school to this -- they go to school for this. They are prepared for this. So, we want to ensure that parents have a fair share (sic).

And, as stated before, I have seen OAH members rule and be very biased for districts rather than for parents. So, I want to say too, please, be fair to most of us parents and ensure that most members are parents and not just lawyers that defend school districts.

JUDGE CASTILLO:

Thank you. Concerned Citizen?

MS. BELL:

Your three minutes begins now.

ATTENDEE CONCERNED CITIZEN:

Thank you. To the previous caller who mentioned that OAH is biased in order to save money, I completely agree with that.

The legislative analyst office, I believe it was, actually determined that the increasing costs of Special Education is not coming from parents wanting, you know, extra services. It's actually coming from the increased administrative costs and attorneys.

So, if you want to, you know, reduce costs, then that needs to be looked at, and especially if attorneys here are being paid by taxpayer dollars by school districts. That's obviously adding to the cost.

I'm also concerned about OAH. I recently read about litigation against OAH. About OAH purposely inflating costs of services in order to receive 8.4 million dollars that was earmarked for students with disabilities and that OAH hid the information from the CDE and failed to ensure that the federal funds were audited as required.

And improperly used these education funds to cover losses in the general jurisdiction division at OAH and to benefit defendants.

And that seems to go to the bias that OAH wants to save money and is -- and if -- if this is true, obviously those are allegations, but OAH themselves are actually taking money from Special Education and improperly using those funds.

OAH is also misleading parents by telling parents that they cannot bring advocates to mediation. And on the mediation only forms and in previous handbooks, it's even in writing, that parents cannot bring an advocate to mediation only. I cannot find that anywhere in the law, and that seems to be absolutely, you know, opposed to the law.

Furthermore, OAH is not providing public records. So, OAH is not providing -- is not conforming to the California Public Records Act request and that also is mentioned in the litigation, in the Gibson lawsuit.

So, OAH is -- is made up of attorneys and judges, who are not following the laws. And that is just unconscionable. We need attorneys and judges that we can depend on. We are already fighting the school districts. We're already fighting the attorneys.

OAH is supposed to be the arbiter of truth and fairness and that is not happening. Thank you.

JUDGE CASTILLO:

Tonya Whiteleather?

MS. BELL:

Your three minutes begins now.

ATTENDEE WHITELEATHER:

Thank you. I do want to note one thing I've been very, very confused about, is OAH's very interesting position that while a parent may be accompanied by anybody at a mediation -- I know I've had advocate paralegals I work with who've been thrown out of mediations except in LA Unified. LA Unified, OAH says it's okay. We don't care. They can bring mediators in to represent a party. So, that shouldn't be.

The law is clear that somebody can bring in anybody to advise and assist and I believe that the position that OAH has taken about advocates or educational consultants coming in and the contradictory position it's taken with LA Unified, allowing them to bring in a non-attorney to mediate. It does not seem quite fair to parents.

The other thing I wanted to mention was I continue to have problems getting transcripts on our appeals. I have one from months ago, and I know everybody's having trouble getting staff. I'm assuming that's part of it. But we had this a year or so ago as well, and I've already spoken to Anthony a couple of times.

We have received a multiple-volume transcript that's illegible because it's so light. And I assume that OAH gets it and kind of sends it off because who would want to palm through everything.

But somebody -- OAH is getting ripped off. They're not properly preparing a transcript and OAH has to spend time and money to go back and repeat a transcript. So, that's an ongoing problem. Thank you.

JUDGE CASTILLO:

Mary Kellogg?

MS. BELL:

Your three minutes begins now.

ATTENDEE KELLOGG:

Thank you so much. My only comment is to correct the misrepresentation by Ms. Whiteleather that LAUSD allows advocates in its mediation. LAUSD self-represents in its mediation. It's a self-represented party. It's not bringing in non-attorney. Thank you.

JUDGE CASTILLO:

Seeing no further public comment hands up, any email public comments?

MS. BELL:

Yes. I will address them in the order we've received them. First, we have from PIB, this addresses multiple agenda items. So, I'll just go through until we run out of time here.

"So, first, Item Number 3, overview of Advisory Committee meeting process. In previous meetings, members have asked who exactly reviews the recommendations and makes the decisions whether or not to adopt the recommendations.

For some reason, OAH keeps hiding that information, even though it is a public agency. Why is OAH not transparent? What is OAH hiding? And why are the vast majority of recommendations denied?

Number 13, panel of self-represented parents. I support any information that helps parents who cannot afford to get an attorney or those who chose (sic) to represent themselves.

Unfortunately, OAH has gone out of its way to provide misinformation to parents who are self-represented. I have been told that they cannot bring an advocate to mediation only, even though there is nothing in the law to support this. The OAH mediation only form in prior handbooks and mediation only notices sent to unrepresented parents contain the following erroneous information.

Quote, you may consult with an attorney or legal advisor before or after the mediation. You may also be accompanied in the mediation by someone who is assisting you, who is not an attorney or independent contractor or advocate, end quote.

Purposely providing misinformation to leave parents without an advocate is unconscionable. School district employees are highly paid professionals who are advocates for the school district. OAH needs to immediately stop its very blatant bias against parents and stop providing misinformation.

Agenda Item 14, interactive dashboard. If OAH really wants to help parents, at minimum, the dashboards should be searchable by school districts. The vast majority of parents want information specific to their own district, so that they can see the types of cases presented, the administrative staff, and their testimony, and the decisions made for their own district.

OAH has a history of making the information difficult to find, which can only be purposeful or denote gross incompetence.

Agenda Item 17, notifying SELPAs. Why would OAH have to notify SELPAs if their own school districts are too lazy to do so. That shows a very dysfunctional relationship between the school districts and their SELPAs. In addition to wasted taxpayer dollars if that communication is not happening.

Furthermore, it is my understanding that SELPAs are an entirely different entity and are not a party to the lawsuits. If that is the case, then OAH would be breaching confidentiality by disclosing private information to a third party.

OAH should absolutely not be in the position of sharing confidential information with any outside agency, as this would be a violation of (inaudible)."

And that is the end of this public comment. Should I move on to the next one?

JUDGE CASTILLO:

Yes, please.

MS. BELL:

This is from Ellie Kassing (phonetic) for Agenda Item 25.

"For expedited due process hearings, we previously never had mediations. However, we recently had an expedited case where there was a mediation. Is this a new process that will continue? That mediations will be allowed for expedited cases instead of only having a due process hearing. Thank you."

That's the end of that comment. I'll move on to the next one. From Education Not Litigation.

"Dear Judge Castillo, I submitted comments, Item Number 17, to be read into the record last night well before the OAH meeting. My comment should have been read prior to the committee taking action on Item Number 17. I do not believe they were.

Public comments on agenda items should not be deferred until the end of the meeting, as committee members are prohibited from commenting on general public comments/non-agenda items.

Please take public comments on agenda items before the committee votes. Otherwise, the Bagley-Keene Act may be violated, and most importantly, you will be sending out a message that public comments are irrelevant."

Judge Castillo, unfortunately we do not have any comment from Education Not Litigation via email for Agenda Item 17. So, I apologize. If we had it, we would have read it.

I'll go on to the next comment from PIB.

JUDGE CASTILLO:

I'd just like to note for this meeting, we started on Agenda Item 18. In the October meeting, we ended. Agenda Item 17 was the last item we discussed. We finished the discussion and then stopped the meeting, as we ran out of time and started with Agenda Item 18 today.

MS. BELL:

Thank you.

JUDGE CASTILLO:

Our next email, please?

MS. BELL:

Sure. This one says, "I don't think that this meeting followed the Bagley-Keene Act. The agenda clearly shows Items 1 through 17, but written comments on those items were not read into the record.

Also, an OAH representative stated there were no written comments sent in regarding Number 7. That is not true. I had specifically sent in a comment on that item. Perhaps there was an error in creating this agenda.

Because it now sounds like OAH only wanted to start with Item Number 18, but that is not what the agenda reflects. This has been very confusing and misleading to the public."

Next agenda item (sic) from Mina Lopez (phonetic). This reads, "My comments should have been read prior to the committee taking action on Item Number 17. I do not believe they were. Public comments on agenda items should not be deferred until the end of the meeting, as committee members are prohibited from commenting on general public comment, non-agenda items. Please take public comments on agenda items before the committee votes. Otherwise, the Bagley-Keene Act may be violated, and most importantly, you will be sending out a message that public comments are irrelevant."

And then we have one final comment from Mina Lopez. It reads, "OAH shall respect parents. Public comments shall be read before any agenda item. Language shall be written in simple terms."

That is the end of our email public comments.

JUDGE CASTILLO:

That is the end of this continued Advisory Committee meeting. The next meeting is on June 16th, 2023. OAH will be working on the recommendations and getting the responses out for the recommendations way in advance of the meeting and also for the agenda items being sent. OAH will be sending notices out about when the agenda items are due to the committee members and if there's any vacancies, we'll be posting a list of the vacancies for the committee and seeking applications and getting those applications processed way before agenda items are due.

And with that, this meeting is concluded. I'd like to thank all the Advisory Committee members for your participation in this matter and also for the public and also, finally, we will be preparing the transcript and the transcript hopefully will be done with plenty of time for people to review for preparing agenda items for the June meeting.

Thank you very much for your time. Appreciate it. Bye now.

(Recording Ends)