

TRANSCRIPTION OF RECORDED MEETING

OF

SPECIAL EDUCATION DIVISION

ADVISORY COMMITTEE MEETING

JUNE 21, 2024

BOARD MEMBERS PRESENT:

- Daniel Shaw
- April McCoy
- David Molina
- Sue Singh
- Kimberlee O'Malley
- David Palmer
- Debra Kamm
- Lauren Ashley-Mendez
- Justing Sherrell

OAH STAFF PRESENT:

- Peter Paul Castillo
- Cararea Lucier
- Zackery Morazzini
- Maurene Trotter
- Bob Varma
- Margaret Gibson
- Nicole Srinivasan

SPANISH INTERPRETER: **Brenda Tamez**

TRANSCRIBED BY: Sherry Mainus, NCCR, Sacramento, California

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

DIVISION CHIEF CASTILLO:

And the closed

INTERPRETER TAMEZ:

Yes.

DIVISION CHIEF CASTILLO:

Thank you. Good morning, my name is Division Chief, Peter Paul Castillo, with the Office of Administrative Hearings.

This is the June 21st, 2024, Special Education Advisory Committee Meeting of the Northern California and Southern California Section.

I'm going to request going over a few ground rules concerning the open meetings. We're going to be doing, at the beginning, consecutive translation. So, Ms. Tamez?

INTERPRETER TAMEZ:

Yes, sir.

DIVISION CHIEF CASTILLO:

If you -- okay, if you can just translate after me.

INTERPRETER TAMEZ:

Yes, sir.

DIVISION CHIEF CASTILLO:

Good morning, everybody. This is the June 21st, 2024, Special Education Advisory Committee Meeting.

I'm going to give a few instructions for the Committee members. And then I'm going to give instructions on the use of Spanish translation for anybody who is listening to the video conference and would like this to be translated into Spanish for them.

Ground rules to ensure compliance with the Open Meetings Act. All Committee members must have their cameras on.

The recent revisions to the Open Meetings Act require Advisory Committee members to have their cameras on, unless there's a technical difficulty that prevents it.

Additionally, Committee members are not to use the chat function. The Open Meeting Act prohibits Committee members, the term is serial communication, which is one member talking to another and then another member talking to another where the public cannot hear.

For members of the public, we will be taking public comment. And I will be announcing the public comment portions of the meeting.

For anybody who is attending in person, if you would just raise your hand. And then you'll be asked to come to one of the microphones to speak so everyone can hear you.

For members of the public attending by video conference, you will see a button called raise hand. Please press that button and raise a hand when it's time for public comment. And then when you're called upon you'll be invited in and allowed to be unmuted and can talk.

If you're participating by telephone, press star-nine (*9) on your phone to raise your hand. And then when you are called in to talk, the moderator will ask you to unmute yourself and press star-six (*6) to start talking.

Public comments will be limited to three minutes. The moderator will notify you when your three minutes has passed. And you'll be muted again.

If you wish to provide a public comment by email, please address the email to seaccomments@dgs.ca.gov. In your email please state the agenda item for which your comments relates to. Then OAH will read your email public comment.

If your email does not state the agenda item for which you want to talk about, your email comment will be read during the general comment portion at the end of the meeting.

And next, I'll be giving the instructions for the use of Spanish language interpretation for Zoom attendees.

Ms. Trotter, could you please turn on the interpretation function, and tell me when it's been turned on.

MS. TROTTER:

It's been turned on.

DIVISION CHIEF CASTILLO:

Thank you. For video conference attendees, we have a Spanish language interpreter, Brenda Tamez.

Oh, she's probably in the room. Ms. Tamez, if you can get out of the room for a second. Are you out, Ms. Tamez.

ADMINISTRATIVE LAW JUDGE LUCIER:

Peter Paul, she's speaking in the English channel.

DIVISION CHIEF CASTILLO:

Are you there, Ms. Tamez? Can you go for the moment into the original channel? Then when I give instructions, please, then you can go in the Spanish - then you can go in the English channel.

Okay it does say in English then. Okay. So, for attendees who'd like to list for simultaneous translation through the conference, you'll see on your video screen at the bottom a globe that says interpretation.

If you do not see it, there is a button that says more. Please click that. And then you'll see interpretation.

Please select, for those who want Spanish translation, please select Spanish. This function does not work for people who are listening by telephone.

Okay, Ms. Tamez will now be going into the Spanish language channel to provide translation. Thank you.

For our other members and members of the public, you're requested to choose on this interpretation function, English. The reason for this, it allows better ability for the -- Ms. Tamez to hear you, to provide accurate Spanish language translation.

So, if you could please look at the interpretation and choose English. And it also prevents any bleeding out of the translation where you're hearing it during the meeting.

And we'll do introductions. My name is Division Chief, Administrative Law Judge Peter Paul Castillo of the Office of Administrative Hearings. I'm conducting today's meeting in our San Diego Office of the Office of Administrative Hearings.

We also have another public location in our Sacramento office as compliant with the Open Meetings Act. Posted on our website are the locations for the Committee members. And all of them have chosen to attend by video conference on today's meeting.

I would like to do introductions of some OAH personnel. Zackery Morazinni, I think he is in our Sacramento office.

To the next of him is Presiding Judge Joy Redmon. And next to her is Staff Service Manager Maurene Trotter.

I'd like to introduce Deputy Director, Bob Varma.

DEPUTY DIRECTOR VARMA:

Good morning.

DIVISION CHIEF CASTILLO:

Presiding Judge Margaret Gibson. And then Office of Administrative Hearings Senior Attorney Nicole Srinivasan.

ATTORNEY SRINIVASAN:

Good morning.

DIVISION CHIEF CASTILLO:

And here next to -- in the office, but unfortunately off camera, is Administrative Law Judge Cararea Lucier, who will be the note taker for and secretary for today's meeting.

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

I'm going to do the official role to -- for quorum. It does appear from the video attendees that we do. But I have to do it by law.

So, first, and if you are please unmute yourself and just say here, present. Jessica Castellanos. Daniel Shaw.

MR. SHAW:

Present.

DIVISION CHIEF CASTILLO:

April McCoy.

MS. MCCOY:

Present.

DIVISION CHIEF CASTILLO:

Alfonso Padron.

MR. PADRON:

Present.

DIVISION CHIEF CASTILLO:

David Molina.

MR. MOLINA:

Present.

DIVISION CHIEF CASTILLO:

Jennifer Adams.

MS. ADAMS:

Present.

DIVISION CHIEF CASTILLO:

Sue Singh.

MS. SINGH:

Present.

DIVISION CHIEF CASTILLO:

Kimberlee O'Malley.

MS. O'MALLEY:

Present.

DIVISION CHIEF CASTILLO:

Thank you. David Palmer.

MR. PALMER:

Here.

DIVISION CHIEF CASTILLO:

Debra Kamm.

MS. KAMM:

Present. And I do have a question when you have a chance.

DIVISION CHIEF CASTILLO:

Okay. Lauren Ashley-Mendez.

MS. ASHLEY-MENDEZ:

Present.

DIVISION CHIEF CASTILLO:

Justin Sherrill.

MR. SHERRILL:

Here.

DIVISION CHIEF CASTILLO:

Okay. The other thing I forgot to mention during my brief statement about the Open Meetings Act. For people who came in by video conference, you have seen the standard OAH notice about not recording the meeting. This is because for Zoom we use Zoom for our mediations and hearings. And that is a standard disclaimer that we have for that.

We cannot turn it off just for this Zoom meeting. The Open Meetings Act does permit members of the public, whether or not they're attending in person or by video conference to record today's meeting of the Advisory Committee.

So, if anybody would like to record this meeting by themselves, they can. The Office of Administrative Hearings is also recording, as I indicated at the beginning of this meeting, and will make a transcript available on our website and to the public after it is transcribed.

Okay, Ms. Kamm, you had a question?

MS. KAMM:

Oh hi, thank you. I think I'm just a little lost on the agenda because you went to the introduction of the OAH staff in attendance, which is agenda item number six, I believe.

And I'm just trying to follow the agenda. Have you gone through the other items, such as number three, overview of the Advisory Committee Meeting process?

DIVISION CHIEF CASTILLO:

I have not. I'm going through that.

MS. KAMM:

Okay. So, I just want to make sure I have the correct agenda and that we are going in order. Is that correct?

DIVISION CHIEF CASTILLO:

Yes.

MS. KAMM:

Okay, thank you.

DIVISION CHIEF CASTILLO:

Thank you. So, overview of the Advisory Committee Meeting process. This meeting is being conducted as a Zoom webinar and also in person.

For the Advisory Committee member, I will be introducing you briefly. And if you could give a brief comment about why you're participating as an Advisory Committee member.

We'll be going over the agenda items and where there's time for, possible recommendations. We'll ask that the person who presented the item to give -- I

will state the agenda item. And then for the person who presented the agenda item, to give a discussion about why they wanted this agenda item on the agenda.

If there are any legal or technical terms, I will provide some background information, as it was a recommendation in prior Committee meeting that OAH provide explanation of technical and legal terms for members of the public. So, they can understand the discussion better.

Since all the members are attending by video conference, after that if you wish to speak, please raise your hand by using the raise hand button on the bottom of your screen. And then I will call upon you and ask that you unmute yourself.

If you're having trouble with that, I will ask you then to raise your hand, like that, and then I will call on you.

And please keep yourself on mute unless you are speaking on an agenda item.

After taking the comments from the Committee members, I will take -- we will take public comments. And as I explained earlier, how the public comments will be taken.

Then I will ask if any member of either Northern California or Southern California has a recommendation for OAH to consider. If there is one, please state it in a sentence or two for the recommendation.

Judge Lucier will repeat it back to make sure that we have it correct. And then once we make sure that we have it correct, I will ask if anybody would like to second that. You can second by raising your hand.

Then I'll ask you to say it on the record that you second the agenda item - I mean second the recommendation. We'll take further Committee comments about the recommendation, and then public comments.

And then we will vote on the proposed recommendation. I will do rollcall. And please say yes or no when you're called upon.

Are there any questions regarding the Zoom functions. Ms. Kamm you still have your hand up.

MS. KAMM:

Yes, I would like to -- like to address the Advisory Committee meeting process. I'm concerned that there is no adoption of the agenda for us to vote on. That's something that I see in almost every other public meeting that I've attended.

And I'm also concerned that multiple agenda items were censored and removed and are not appearing on this agenda.

It's my understanding that OAH government employees for some reason removed multiple items on the agenda that the public had asked for. And without any explanation and without any name of the person who made the decision, those items were just summarily removed.

And in particular, the very first item that we requested was that verification of Board approval for litigation be put on the agenda.

And it was removed with no explanation by an unnamed source, which I believe is in violation of the very purpose of the Bagley-Keene Act. And I think, unfortunately, it really kind of reinforces the notion that OAH is very biased against parents.

This is a very -- this is a very touchy subject that a lot of parents are being litigated against without the school boards even knowing about it. That was the number one agenda item that we requested be put on this agenda.

And for some reason, it was just summarily removed. And I think that that's a problem.

So, I would like to note my objection to this agenda. Because it does not encapsulate all of the agenda items that were actually provided to OAH. Thank you.

DIVISION CHIEF CASTILLO:

And then we're just going to move onto the introduction of the Committee members who are here. Daniel Shaw.

MR. SHAW:

Good morning, everyone. Daniel Shaw, I'm an attorney who represents students. And I'm also a parent of a child with special needs.

DIVISION CHIEF CASTILLO:

April McCoy.

MS. MCCOY:

Good morning, everyone. My name is April McCoy. I am an attorney also representing parents and students. And I also am a parent of a student with special needs.

DIVISION CHIEF CASTILLO:

Alfonso Patron.

MR. PADRON:

Yes, I'm Alfonso Padron. And I'm a grandparent of a child with autism. And I've been an advocate for almost 20 years now, representing parents and students.

DIVISION CHIEF CASTILLO:

David Molina.

MR. MOLINA:

Good morning. I'm David Molina. I'm a retired clinical psychologist and a parent of a special needs child.

DIVISION CHIEF CASTILLO:

Okay. Mr. Molina, when it's time for you to talk if you can just keep your voice up. It's a little hard to hear you. Jennifer Adams.

MS. ADAMS:

Good morning, everyone. I am an attorney representing the school district and also a parent of a special needs student as well.

DIVISION CHIEF CASTILLO:

Sue Singh.

MS. SINGH:

Good morning, everyone. Sue Singh representing LEA Southern California.

DIVISION CHIEF CASTILLO:

Kimberlee O'Malley. You're still on mute, Ms. O'Malley.

MS. O'MALLEY:

Kimberlee O'Malley. I'm a parent of two children with special needs. And I'm also an attorney for parents and children.

DIVISION CHIEF CASTILLO:

David Palmer.

MR. PALMER:

Good morning. I am a parent of two students with disabilities. And I have been involved with the IEP process for over three decades as a licensed medical social worker.

And I had my hand up earlier just wanting to agree that I, too, had two agenda items removed without explanation. So, I agree that -- I object to the agenda and would like to know why those were removed and how that decision was made.

DIVISION CHIEF CASTILLO:

Debra Kamm.

MS. KAMM:

Hi, I'm Debra Kamm. I'm from Irvine. And I have two children with special needs.

DIVISION CHIEF CASTILLO:

Lauren Ashley-Mendez.

MS. ASHLEY-MENDEZ:

Good morning. My name is Lauren Ashley-Mendez. I am an attorney with Disability Rights California. I represent students and parents. And I also identify as a person with a disability.

DIVISION CHIEF CASTILLO:

Justin Sherrill.

MR. SHERRILL:

Hi, everyone. My name is Justin Sherrill. And I'm a special education administrator in Southern California.

DIVISION CHIEF CASTILLO:

Ms. O'Malley, the instructions -- I wasn't sure if you were present at the beginning, is that your camera needs to be on during all times as an Advisory Committee member.

Okay, introduction of staff. I've indicated who we have in attendance. Judge Lucier, OAH Attorney Nicole Srinivasan, Maurene Trotter, Anna Brown, Lori Kromm (phonetic), and Trinity Durantis (phonetic). The last three are our -- work in our operations division.

There have been no hirings of any new ALJs since the last Advisory Committee meeting in October. New staff hiring since then, Maurene Trotter, Staff Service Manager, that some of you may have had contact with.

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

For application, members, actually it was a mistake to have Ms. (inaudible), she's no longer a member.

So, right now -- between now and the next meeting in October, we'll not have any vacancies in any of the Northern or Southern California Advisory Committee members.

When a vacancy does arise, we'll post that on our website. And we'll send out a message on (inaudible) requesting applications for Advisory Committee members.

The expectations of the members are all members are expected to attend every meeting. The meetings will be held on the third Friday of June and the third Friday of October.

If a member is not able to attend, please notify OAH as soon as possible. If a member misses two meetings, they may be removed from the Committee. And OAH will start the application process and choose a replacement member.

OAH has encouraged members to participate fully. And your opinions and recommendations are -- and input are very valued among the Office of Administrative Hearings.

This reminder that this -- I went over at the beginning of the Open Meetings Act, just because there have been changes. But just a reminder that this Advisory Committee follows the Open Meetings Act and the provisions of that regarding Advisory Committee meetings. Which have been recently revised.

Each member has been sent a copy of the Bagley-Keene Act and is expected to follow all the requirements. A copy of the Act can be found at the Advisory Committee section of the OAH website.

There's also a link on the website and in the agenda to get further information from the Department of Justice website about the Open Meetings Act.

And then, we will need a Chair for the Northern and Southern California Committee to collect agenda items for the October meeting on October 18th.

The agenda items are due on October 1st for the fall meetings, to give OAH time to look at those and then to create the agenda and to give the proper 10-day notice.

Is anyone interested in Southern California of being the Chair and collecting Committee items? Ms. Kamm, you have your hand up?

MS. KAMM:

Yes. This, again, is a procedural issue. I'm getting a little lost. You seem to be going from agenda item to agenda item.

And I just want to make sure that the public is having an opportunity to speak on each agenda item. I mean, I appreciate you trying to work through all of these things expeditiously.

But you went through the introductions, the application period, the expectations of members, the Open Meetings Act, and then the selection of the Chairs all really quickly.

And each one of those is a separate agenda item. And I had my hand raised a couple agenda items back. So, I want to make sure that when Committee members or the members of the public want to speak on an agenda item that they are being allowed that opportunity.

I do believe that is in the Bagley-Keene Act that the public and the Committee members can speak on each agenda item, as well as in public comments at the end.

So, I just really want to kind of take a quick pause and make sure that we haven't, you know, precluded any public comments on any of those agenda items. And I guess, as for my own abilities, if you could please just announce each agenda item and then see if there are public comments, that would be great. Thank you.

DIVISION CHIEF CASTILLO:

So, for agenda item 11, for the selection of the Chair. Is anyone in the Southern California members interested in being the Chair? Ms. Kamm?

MS. KAMM:

Yes, I have that role now. And I'd be happy to continue as the Southern California Chair. As long as the agenda items that are gathered are included in the agendas.

DIVISION CHIEF CASTILLO:

Would anybody else in Southern California like to be the Chair? Any comments regarding Ms. Kamm being the Chair?

MR. PALMER:

I appreciated her responsibility and was easy to do what I needed to do. And so, she seemed to fulfill that role well.

DIVISION CHIEF CASTILLO:

Thank you, Mr. Palmer. With no other person, Ms. Kamm will be the Chair of the Southern California to collect agenda items.

For Northern California do we -- would anybody like to be Chair for Northern California?

MR. MOLINA:

I believe I'm currently. I wouldn't mind retaining this position.

DIVISION CHIEF CASTILLO:

Is anyone else in Northern California? Any comment on Mr. Molina being the Chair to collect comments for Northern California?

With that, Mr. Molina is the Chair to collect agenda items for the October meeting.

Agenda item 12. This was placed on the agenda by the Office of Administrative Hearings. The agenda item is full student attorneys and school districts and their attorneys need to inform OAH, the Office of Administrative Hearings a due process complaint and mediation only request that a parent or parents require an interpreter.

The reason why OAH has put this on as an agenda item is that we -- it is not infrequent that a day or two before a scheduled mediation or hearing that the Office of Administrative Hearings finds out from an attorney that the parent requires an interpreter.

In District filed cases, the district may be aware that the parent who they filed against requires an interpreter but does not list that on the request. And OAH finds out at the mediation that the parent request needs an interpreter.

So, that is the reason for the agenda item, if somebody is aware as soon as possible that a parent or a witness requires an interpreter, please inform OAH as soon as possible, the case manager. And that will allow us to get an interpreter and so for the matter to proceed.

I will be taking first comments on this from members of the Committee. Then I'll be moving to public comment. And then to see if any members of the Committee would like to make a recommendation on the OAH item.

Mr. Shaw, you had your hand up first.

MR. SHAW:

Yeah, I guess my question is how, I mean, when we create due process complaint we usually put in big bold letters whether the parent's going to require interpretation and the language as well. Is there -- is that not sufficient?

DIVISION CHIEF CASTILLO:

That's fine.

MR. SHAW:

Or are you recommending some other process?

DIVISION CHIEF CASTILLO:

What you do is perfect. A lot of attorneys in the caption will say due process complaint. And then below that parent needs a Spanish, Mandarin,

Vietnamese interpreter. Or in the complaint where they list the parent. Parent, you know, one and then put in parent that parent will require an interpreter, you know, Portuguese interpreter.

So, just somewhere like in the caption or in the -- where you're listing the parent. Because from that information where you list the parent, that's where we enter into our case management system as an entity. And then we can put down the interpreter's needed and the language that the person will require.

Ms. O'Malley?

MS. O'MALLEY:

Thank you. This number 12 is vague. Because it doesn't tell by when you need to do it or exactly how you need to do it.

And what you're saying is, oh you could just fill it in somewhere. And then it leaves open the chance for others interpretation to, oh I'll do it this way. And then being told that wasn't acceptable.

But it's a vague agenda item. Because it doesn't tell by what time. Is it saying within the complaint -- within the request for a due process or mediation, within that actual request that you require an interpreter?

Why not have a space on those for an interpreter? I mean, because you're leaving it up to -- it's vague in terms of how it needs to get done and by when.

DIVISION CHIEF CASTILLO:

The OAH model due process complaint and the model mediation only form for parents to file and for school districts to file does state on our model form that's posted on our website, does parent or somebody, because it may be a witness, or et cetera, require an interpreter. And if so, in which language. So, it is on our model complaint form.

Mr. Palmer?

MR. PALMER:

Well, my comments are kind of on the line of what Ms. O'Malley shared. But specifically, I was wondering, there's no timeline of when you're asking for that in this proposal.

So, I would want to know, like such as if we're bringing someone to a meeting we're supposed to give 24 hours. Or if we're going to record the meeting, we're supposed to give at least 24 hours' notice.

So, you know, some kind of timeline would be helpful as part of this recommendation.

DIVISION CHIEF CASTILLO:

This is more just to put for information out there. But it's requested that when parties file their due process complaint to please list on their due process complaint if somebody requires interpreter services.

If somebody is aware that an interpreter will be needed at a mediation or a hearing because of an additional person attending who was not listed on the due process complaint, to notify OAH as soon as being made aware of that.

Our contract with the interpreter states that we -- OAH shall endeavor to give three days -- three business days' notice, to the interpretation service to get an interpreter.

Ms. Kamm?

MS. KAMM:

I agree with the previous comments. And in addition, I think that the wording of this is problematic. It says both student attorney and the district and their attorneys need to inform OAH.

So, this is setting up a problem where if only the student's attorney requests an interpreter and the school district and/or their attorney does not, then it sounds like the request is not taken seriously.

It really should be or. It should be the student's attorney or the school district's or their attorneys.

Secondly, I think it's problematic that it refers to mediation only. It's my understanding that mediation only, attorneys are not allowed to be present. And mediation only is an avenue for parents to request mediation without attorneys.

And so, you're talking about parents who are not represented. They don't know they law. They don't understand due process. And if, as you say, you

already have something on the mediation only form asking if they need an interpreter, then I really don't see how this OAH agenda item is even relevant. That doesn't make sense to me.

It seems to me that a much easier process would be for OAH to have somewhere on the form or when you calendar a due process hearing or a mediation that one of the question is you ask if the student needs an interpreter.

I think that this is very vague, as others have said. I think it's problematic in that it requests both sides to request the interpreter. And it really is confusing to me why mediation only would also be included in here when attorneys are not allowed to participate, as far as I understand.

DIVISION CHIEF CASTILLO:

The language in the agenda item was just more to convey -- just to request the interpreter. If I went through every nuance, it would be a 12-page agenda item.

So, it's just to provide general information on this without getting into every single possibility or nuance. As I've indicated before, that the mediation only, the due process hearing complaints, due model complaints do indicate a space for people to list do they need an interpreter.

I did not list parents, because parents are very good when they make the request for a mediation only or a due process request to list it.

Whether or not they use our form or to draft their own complaint the model form is not required to list their language needs. The problem that we have seen is from

school districts when they file either by the district representative and their attorney and not list in their file cases, and not listing whether or not a parent requires an interpreter.

And also in cases followed by attorneys for students and not listing if their client requires an interpreter. And asking at the last moment that an interpreter is required.

Just a general thing is that as soon as you know, so if you are drafting a complaint, whether or not you're using our model form or not, that a parent will require interpreter, to please put that as I indicated to Mr. Shaw. Probably on the first page listed right after the parent.

If you're using our model form, the model form will ask if parent requires an interpreter. Ms. O'Malley.

MS. O'MALLEY:

Thank you. As you're talking, you're giving some very specific points that are not in this agenda item. Such as you need to inform or secure an interpreter, you need three days.

But that isn't in here, and someone could request it. And you could say, sorry, you didn't do it in, you know, sufficient -- you didn't notify us in sufficient time.

So, I'm again, concerned at, while you don't have to list every single thing there, I think there are some critical things missing in this. Such as exactly how they should do it and when -- and by when. Which you just said three -- you just gave a three-day, a 72-hour indication that that's needed.

So, that's one of my concerns.

DIVISION CHIEF CASTILLO:

OAH will, if we get a call the day before, as we just had, we will endeavor to get the interpreter with our service provider. And we have done that. And we do that all the time. Mr. Shaw.

MR. SHAW:

Put my hand up. So, I, hearing what people said, I kind of reworded this. Because I think there's two aspects to this.

I think there's the mediation component. I also think there's an issue with witnesses that sometimes comes up. So I could read into the record what I'm trying to take everyone's concerns into consideration what I came up with.

I'm changing the wording a little bit.

DIVISION CHIEF CASTILLO:

We may. I will be asking if somebody -- if the members would like to make a recommendation after there's any public comment. And at that time you can make a recommendation, Mr. Shaw. All right, thank you.

Are there any other comments on this agenda item from the Committee? Any public comment.

TROTTER:

Hands up for public.

DIVISION CHIEF CASTILLO:

Not seeing any hands up. Have we received any email comments on this?

TROTTER:

No email comments received.

DIVISION CHIEF CASTILLO:

Any comments from members of the public attending in person?

TROTTER:

None in Sacramento.

DIVISION CHIEF CASTILLO:

Okay. Would any Committee member like to make a recommendation on this agenda item? Mr. Shaw.

MR. SHAW:

This is my recommendation. Both petitioner and respondent will inform the OAH in a due process complaint and a mediation only request that a participant requires an interpreter and in what language.

With respect to witnesses, when a witness requires an interpreter, that information shall be included in the petitioner or respondent's pre-hearing conference statement.

DIVISION CHIEF CASTILLO:

Would any Committee members like to second Mr. Shaw's agenda item.

MR. PADRON:

Alfonso Padron seconds.

DIVISION CHIEF CASTILLO:

What?

MR. PADRON:

I second it.

DIVISION CHIEF CASTILLO:

Okay, Mr. Padron. We'll have discussion on this. Do you have that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

I have, it is recommended that both petitioner and respondent will inform the OAH in the due process complaint and mediation only request, that a participant requires an interpreter and what language.

It's recommended that with respect to witnesses, that information shall be included in the pre-hearing conference statements.

DIVISION CHIEF CASTILLO:

Ms. Kamm, any comments regarding the proposed recommendation?

MS. KAMM:

Yes, again, I have an issue with it being -- I have an issue with this for parents. I think this just adds a greater burden for parents who are filing for mediation only.

And I think even the wording, as Mr. Shaw stated, I still think it's problematic that it says both the school district and the parents, both parties have to request an interpreter.

Because I'm concerned, number one, that there's going to be disagreement. I know multiple times school districts who refuse to provide an interpreter or don't think that the parent needs an interpreter.

So, I disagree that both parties have to agree that an interpreter is needed. I think that that's going to cause problems.

It also doesn't -- I'm not quite sure what this means. What happens if they do not request an interpreter? Is there some penalty involved?

I'm just very concerned about this very, very vague language and that it puts more pressure on parents to have another thing to request. And I'm very concerned about how OAH could penalize parents for not abiding by this.

DIVISION CHIEF CASTILLO:

Mr. Molina?

MR. MOLINA:

Thank you. Yeah, I would recommend that both be changed to either.

DIVISION CHIEF CASTILLO:

Mr. Shaw, would you like to make that change?

MR. SHAW:

Yeah, I'm comfortable with that change.

DIVISION CHIEF CASTILLO:

Okay. One second while the --

ADMINISTRATIVE LAW JUDGE LUCIER:

Do you want me to read it again?

DIVISION CHIEF CASTILLO:

Yes.

ADMINISTRATIVE LAW JUDGE LUCIER:

Okay. It is recommended that either petitioner or respondent will inform the OAH in a due process complaint and mediation only request that the participant requires interpreter and in what language.

It is also recommended that with respect to witnesses, that information shall be in the pre-hearing conference statement.

DIVISION CHIEF CASTILLO:

Is there a second as to this revised recommendation?

MR. PADRON:

Alfonso Padron seconds.

DIVISION CHIEF CASTILLO:

Okay. Mr. Padron seconds it. Are there any further comments from the Committee as to the revised recommendation?

We have a member of the public. Video education, not litigation. If you could please unmute them.

TROTTER:

Education Not Litigation, please feel free to speak.

EDUCATION NOT LITIGATION:

Good morning, OAH Advisory Committee and members of the public that are watching on the live stream. I am a parent. I've been in the system for a long time.

I would echo the comments by Ms. Kamm and Mr. Palmer. This process has to be easy for parents. I filed mediation only many times and was appreciative of the simplicity of the process.

I think the burden should be on districts. If districts already know that the parent requires an interpreter, then let's not put that on the parent. That's another requirement on the parent.

And I'm really troubled by hearing the comments earlier about Committee members forwarding agenda items and not getting on the agenda. And then OAH is having an item on the agenda, which is perpetuating the perception in the parent community that OAH is using this Committee as puppets.

And it really is defeating the purpose of an Advisory Committee, which is for the agency to hear the comments from Committee members and the public regarding the operations of the agency. Not for the agency to put out their own policies and just use the Committee to check the box.

That is an anti-constitutional framework. And it works great for attorneys, because now the parents will be more dependent on attorneys to have to fill out all these government forms. It is very unfair to parents.

And Mr. Castillo just mentioned that if he were to explain everything associated with this agenda item, it would be a 12-page long dissertation.

So obviously, there's 12 pages out there that the Committee never saw and that the public never saw. So this is completely wrong. And I urge everybody on the Committee, especially those people that are saying they're representing parents, to vote no on this item. Thank you.

DIVISION CHIEF CASTILLO:

Any other members of the public?

TROTTER:

None have raised their hand.

DIVISION CHIEF CASTILLO:

Any email comment? Any comment from any members attending personally?

ADMINISTRATIVE LAW JUDGE:

Yes, oh sorry, for the email comments.

DIVISION CHIEF CASTILLO:

Okay.

TROTTER:

We did receive an -- we did receive an item for 12. Note to item 12, the comment is we should not put additional burden on parents. The school district should report to OAH if they know the parent needs an interpreter.

This is a free and appropriate public education. This means the parents should not bear the burden to find and pay an interpreter. That is all.

DIVISION CHIEF CASTILLO:

Any member attending in person?

TROTTER:

None in Sacramento.

DIVISION CHIEF CASTILLO:

Okay. We'll take a vote on the proposed recommendation for agenda item.
Mr. Shaw.

MR. SHAW:

Is it possible to make a change to my proposal?

DIVISION CHIEF CASTILLO:

Yes, it is.

MR. SHAW:

Okay, after hearing comments from people from the public, this is what I've written. Both petitioner and respondent will inform the OAH in a due process complaint and a mediation only request that a participant requires an interpreter and in what language.

With respect to witnesses, when a witness requires an interpreter, that information shall be included in the petitioner or respondent's pre-hearing conference statement.

In the event a parent is self-represented and English is not their primary language, the local education agency or agencies shall notify the OAH of the need for an interpreter.

ADMINISTRATIVE LAW JUDGE LUCIER:

Could Mr. Shah repeat the last sentence again, in the event?

MR. SHAW:

In the event a parent is self-represented and English is not their primary language, the local education agency or agencies shall notify the OAH of the need for an interpreter.

ADMINISTRATIVE LAW JUDGE LUCIER:

Okay. This is what I have. It is recommended that both petitioner and respondent will inform the OAH in due process complaint and mediation only request that participant requires an interpreter and in what language.

It is recommended that with respect to witnesses that information shall be in petitioner or respondent's pre-hearing conference statements.

In the event of a parent who is self-represented and English is not their primary language, local educational agencies shall notify OAH of the need for an interpreter.

MR. SHAW:

Apologize, one change. I didn't -- I meant to keep either in there, not both at the beginning.

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that either petitioner or respondent will inform the OAH in a due process complaint and mediation only request when a participant requires an interpreter and in what language.

It is recommended that with respect to witnesses, that information shall be in petitioner or respondent's pre-hearing conference statements.

In the event of a parent who is self-represented and English is not their primary language, the local educational agency shall notify OAH of the need for an interpreter.

DIVISION CHIEF CASTILLO:

Would any member like to second this?

MR. PADRON:

Alfonso Padron continues to second.

DIVISION CHIEF CASTILLO:

Okay. Ms. Kamm, you have a question or comment? Sorry about that.

MS. KAMM:

I have a comment on this. So we've now spent, I don't even know, 20 or 30 minutes on this one agenda item. And now it's getting more and more complex.

And I agree with the member of the public who stated that this is supposed to be an Advisory Committee to the Office of Administrative Hearings.

And suddenly this has been totally sidetracked. I was not even aware that OAH could put agenda items on this agenda for this meeting.

This goes to my objection from the very beginning that this -- there was no vote to even approve this agenda. There was no notice that OAH was going to include their own items, which I do believe hijacks the purpose and intent of this entire meeting.

OAH, as far as I know, I don't even know what the mechanism is for OAH adding agenda items. That certainly was not in any of the materials that I received as a Committee member.

To my knowledge, we only have a Northern Committee member and a Southern Committee member who each collected agenda items. And those were the items that were supposed to be on the agenda.

So, not only are those -- have those been omitted by an unnamed government worker. Some government worker has included this OAH agenda item, which I believe is in complete contradiction to what this meeting is supposed to be.

I think we've wasted about 30 minutes now of rehashing this wish item for OAH. And it doesn't even belong on this agenda.

So I'm quite concerned about how this meeting is being conducted.

DIVISION CHIEF CASTILLO:

Any other comments from any other on this revised agenda recommendation. Any comments from members of the public on the revised? Education Not Litigation, if you could please invite them in and unmute them.

TROTTER:

Education Not Litigation, please feel free to talk. I have set up three minutes.

EDUCATION NOT LITIGATION:

Thank you so much. And I wholeheartedly agree with Ms. Kamm on what she just said. This meeting should not be an opportunity for OAH to have a wish list.

This agenda item is making the process even more complicated. So even though attorneys might be able to navigate this, it's going to be another stumbling block for parents.

And this process needs to be less complicated, not more. So the only part of Mr. Shaw's proposal that I would even entertain would be the part about the district will inform OAH that a parent needs representation -- or translation whenever the parent doesn't have representation.

That's like the only part that I would agree with. Even though even that part is problematic because the district is a local government agency. OAH is a state agency.

So now you have agency to agency disclosing information about a parent without the parent's knowledge or concern, which would be the best scenario. Because otherwise, you're putting the burden on a parent that doesn't speak English, let's keep in mind, and who is unrepresented to navigate all the bells and whistles for OAH.

No to this item. It is a bad idea for parents. Thank you.

DIVISION CHIEF CASTILLO:

Any other public comment? Any further email comment?

TROTTER:

No further email comments?

DIVISION CHIEF CASTILLO:

Any member of the public attending in person like to comment?

TROTTER:

None in Sacramento.

DIVISION CHIEF CASTILLO:

And none in San Diego. With that, we will take a vote. I will first go through Northern California and then Southern California.

Northern California. Daniel Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

April McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Alfonso Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

David Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Jennifer Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

For Southern California. Sue Singh?

MS. SINGH:

Yes.

DIVISION CHIEF CASTILLO:

Kimberly O'Malley.

MS. O'MALLEY:

No.

DIVISION CHIEF CASTILLO:

Ms. O'Malley, we did not hear your vote. We still can't hear you.

MS. O'MALLEY:

The phone's off.

DIVISION CHIEF CASTILLO:

Oh, there we go. I can hear you.

MS. O'MALLEY:

No.

DIVISION CHIEF CASTILLO:

No, thank you. David Palmer?

MR. PALMER:

No.

DIVISION CHIEF CASTILLO:

No. Debra Kamm?

MS. KAMM:

No.

DIVISION CHIEF CASTILLO:

No. Lauren Ashley-Mendez?

MS. ASHLEY-MENDEZ:

No.

DIVISION CHIEF CASTILLO:

No. Justin Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Yes. So, in Northern California, it was five votes in favor, zero votes no. In Southern California, two votes in favor, four votes no.

Since it is pass in Northern California, this will be a recommendation of the Northern California Committee for Office of Administrative Hearings to consider and then to respond to.

At this time, we're going to be taking a 10-minute break to assist the interpreter with a break. And then we'll be going on to agenda item 13A, which is service by email.

So, with that, take a 10-minute break, and we'll be back at 10:48.

(Off the Record)

DIVISION CHIEF CASTILLO:

Mr. Sherrill, you can turn on your camera. Are you there, Mr. Sherrill? Okay, thank you. Mr. Sherrill?

We're going to start agenda item 13A. Mr. Sherrill is not present at the moment. So, he will not be able to participate as a Committee Member in this discussion. The rest of the members from the prior roll call are present.

Agenda Item 13A, Service by Email. The agenda item is, there is no place to serve parties by email on the request for mediation only by district or other public agency form, while the request for mediation only by student form email is included under facsimile in the proof of service.

Committee member Adams, this is your agenda item if you'd like to discuss.

MS. ADAMS:

It's pretty self-explanatory. It's contained in the request for mediation only by a student under the proof of service, specifically in the facsimile email paragraph would also be included in the request for mediation only by the district.

So, we could be able to -- so the district can serve by email as well.

DIVISION CHIEF CASTILLO:

Mr. Sherrill is present. Would any member of the Committee like to discuss this agenda item 13A? Ms. Kamm?

MS. KAMM:

Yes, I guess my question is, this must require the parental consent to use email? Because as you can see, the next item is related to this.

And the problem is we have parents who are not getting emails. They're not getting, you know, even FedEx letters that are dropped off on the porch supposedly or hidden in the bushes and things like that.

So, this is requiring, I guess, service by email. I would want to make sure that that is at the consent of the parent.

DIVISION CHIEF CASTILLO:

Any other comment by members of the Committee? Ms. O'Malley?

MS. O'MALLEY:

If we don't set up email by OAH or by the district -- by the district, how else are parents notified if they're not getting it by email?

Right now, is it -- what is happening in place of this, that this is a recommendation?

DIVISION CHIEF CASTILLO:

Would you like to address that, Ms. Adams?

MS. ADAMS:

In terms of how are parents being served currently with the mediation-only form. Typically, it's my understanding when the district uses this form, they are being served through the U.S. mail. And they are being served through email. It's just there isn't any way to notify the OAH that they've been served in that matter.

DIVISION CHIEF CASTILLO:

Mr. Palmer?

MR. PALMER:

Yes, I was wondering, this is specific to mediation only. So, what is the process for due process, like how is that happening in due process? And why would it be different for mediation only?

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

I was trying to find the form and hopefully I have the right form. But it looks like it says on here already that it can be done via fax or email to the person or agency. So I'm trying to understand the recommendation.

MS. ADAMS:

Response, Ms. Adams?

MS. ADAMS:

Yes, so it does say facts or email on a request for mediation made by a -- filed on behalf of the student. But if you go to the request for mediation form filed on behalf of the district, it includes facsimile but not email.

DIVISION CHIEF CASTILLO:

Any other comment by members? Oh, Ms. Kamm?

MS. KAMM:

Well, I think, again, that probably goes to consent. I don't think that the district can consent to the parent getting an email.

So, I think that the parent must be the one making that choice. And so, I think what you said is consistent with that. If the parent's form for mediation only allows for email correspondence, but certainly the school district cannot make that choice for a parent.

DIVISION CHIEF CASTILLO:

Any other comment by members of the Committee? Ms. O'Malley? You're on mute Ms. O'Malley.

MS. O'MALLEY:

My apologies. I want to make sure this is in addition to getting it by mail or in person, that this isn't ruling out the others.

It's just to add to it as I understand the recommendation.

DIVISION CHIEF CASTILLO:

Ms. Adams?

MS. ADAMS:

It would be essentially using the same verbiage that's in the request from the mediation filed by the student. (Inaudible) in the request for mediation made by the district.

And it says facsimile transmission. Also, referred to as fax or email to the person or agency (inaudible).

MS. O'MALLEY:

Okay.

DIVISION CHIEF CASTILLO:

Mr. Molina?

MS. ADAMS:

(Inaudible) --

DIVISION CHIEF CASTILLO:

Oh, sorry.

MS. ADAMS:

-- district --

DIVISION CHIEF CASTILLO:

You're breaking up in sound, Ms. Adams.

MS. ADAMS:

-- party in more than one way. Do you want me to repeat it?

DIVISION CHIEF CASTILLO:

Yes, please.

MS. ADAMS:

Okay. I'm request that the verbiage just be the same in the two documents.
There are multiple options to serve parties.

And when a student files for mediation, they can choose how they want to serve the district. The same would be for the district.

There is first class mail, in person, fax. We're just requesting that email be added to those choices.

DIVISION CHIEF CASTILLO:

Mr. Palmer?

MR. PALMER:

Yes, I'm wondering why Ms. Adams wasn't given the opportunity to respond to my question about what is different than due process as far as how that's notified versus this request for mediation only.

DIVISION CHIEF CASTILLO:

I'm sorry, I didn't understand that to be something for Ms. Adams to -- I'm sorry Mr. Palmer. Ms. Adams the response to Mr. Palmer's question?

MS. ADAMS:

My agenda item is only in regard to these forms for due process, parties can be served by email.

DIVISION CHIEF CASTILLO:

Okay. I'm sorry about that, Mr. Palmer. Any other comments from members of the Committee?

Education Not Litigation has their hand up. If you could please invite them and unmute them.

TROTTER:

Education Not Litigation, please, you have three minutes.

EDUCATION NOT LITIGATION:

Thank you. This should be a vote of no, a resounding no to this item. And plain and simple, I don't think it complies with the agenda requirements of the Bagley-Keene Act.

I saw the description on the agenda. It was very confusing. I didn't have a clear picture of what exactly was being recommended.

And as the discussion ensued, more confusion has ensued because it has devolved into something that is completely different.

To Mr. Palmer's point, it appears to apply to mediation only. But then I'm not sure because there was a mention of due process complaints.

So, this agenda item was not represented well to the public. The title is completely different from the discussion that has ensued.

And I don't know, but I'm getting a feeling that OAH or whoever placed this, these agenda items, certainly number 12 and now this one, there seems to be an attempt to make the mediation-only process more complex than it already is, which we should be doing the opposite.

We should be making it easier for parents to access mediation only. It used to be a very straightforward process. I've done it many times. And if we're going to add all these bells and whistles, the only people we're helping here are attorneys.

And parents are going to have to be more dependent on attorneys to navigate the system. And it's simply not supposed to be this way.

We're not here to serve the government. And it shouldn't be easier for districts or for OAH, that should not be the priority.

The people that have the rights under the Constitution are the citizens. Those are the parents and the students. So, that should be the focus. So no to agenda item 13A. Thank you.

DIVISION CHIEF CASTILLO:

Okay. If you please invite in and allow to speak, Tanya Whiteleather (phonetic).

TROTTER:

Whiteleather, you have three minutes to speak.

MS. WHITELEATHER:

Thank you. Hi. I'm just very, very much confused. And it could be that I'm missing something. But mediation is obviously a part of due process set up and established by IDEA.

And I would expect that service of documents would be according to the state law. Which says that you would have to have a written consent. So, I'm not sure if that is part of this. You know, parents can always consent to electronic service. It's in OAH's own documents.

I just, I guess I'm a little confused by this. And it may be my short-sightedness in not understanding. But, you know, parents don't know. They need guidance. They don't understand electronic service.

And state law is very clear that electronic service must be consented to in writing and filed with the agency. Thank you.

DIVISION CHIEF CASTILLO:

Adriana, if you could invite this person in and unmute them.

TROTTER:

Adriana, you have three minutes to speak.

ADRIANA:

Greetings. My name is Adriana. And I, too, as a parent, I am very confused. I also go back to the parental consent. The IDEA emphasizes parental consent.

And so, I would say no to this action item. Please, I ask the members to consider your -- all the stakeholders, all individuals who don't know anything about email, any electronics, they don't use electronics.

And so, parental consent or consent in general, please, it should be considered and must be considered. So thank you for your time and your consideration.

DIVISION CHIEF CASTILLO:

Thank you. Do we have any email comment?

TROTTER:

No email comments.

DIVISION CHIEF CASTILLO:

Okay. Would any member of the public attending in person like to make a comment?

TROTTER:

None in person in Sacramento.

DIVISION CHIEF CASTILLO:

And no one in San Diego. Okay. Mr. Palmer?

MR. PALMER:

Yeah, my understanding, I have personally utilized mediation only several times with my children. And it's been a useful forum to resolve conflicts with the school district.

But my understanding is mediation only does not include attorneys. So, I'm wondering, like, I'm just confused, like, who would be serving that? I mean, I know when I've initiated mediation only, I have notified the district of it and served them with the complaint.

But I'm not clear on what the other parties, and it seems like that would be involving attorneys that aren't supposed to be involved in mediation only.

DIVISION CHIEF CASTILLO:

Ms. Kamm?

MS. KAMM:

Yes, I'm looking at the agenda, and it also -- and I can see why the public is confused.

It says there's no place to serve parties by email on the request for mediation only by the district. or other public agency form.

So, so far we've only been talking about mediation only. And as I said, I do think that that's a parental consent issue.

If the parents want to consent to giving their email and utilizing that as a communication method, that's one thing. But it sounds like Ms. Adams wants the district to be able to dictate to the parent that they will be using email as a communication. And, which I believe was stated, that state law requires written consent for any electronic communications.

So, I'm also wondering what this other public agency form is. We haven't even discussed that. And I think that, you know, I kind of feel like we're getting way off track here.

We haven't even gotten to the majority of the advisory agenda items that have been requested. And this is really concerning to me why we are working on things that seem to be solely benefiting OAH or the district's attorneys.

DIVISION CHIEF CASTILLO:

Before Mr. Padron, I would just like to read the form itself, it's called request for mediation only requested by district or other public agency. That is the name of the OAH form. Mr. Padron?

MR. PADRON:

Yeah, I guess I just would like to make sure because I represent as an advocate, I assist parents. And usually nowadays most parents do have emails but not everyone.

And I don't understand is that are we switching -- trying to switch from being served by mail to be served by email or both?

Because if parents don't have email, and/or they provided an email to the school and they send it to them. So in this case, we're talking about parents filing for mediation only.

I understand there's some parents that can send an email. But to change it to only have this, I think it would kind of complicate it for most parents.

DIVISION CHIEF CASTILLO:

Ms. O'Malley?

MS. O'MALLEY:

I don't see why we need this, because the parents, the request for mediation only\ by student, email is included for the very reason that it has to be the parents or the student that consent to using email.

And if they consent to using email, then the district may use it. But to Ms. Kamm's point, and to state law's point, without consent by the family, the district cannot unilaterally determine they want to use that form for communication.

So, I personally don't see the need for item A. Because otherwise it will void the requirement for consent by the parents or the student to use email as a medium for the communication and document exchange.

It does have it on the student form for that very reason. Because if they consent to using email, then the district may use email. But it has to be by consent.

So, I think this, A, can void that need for consent and allow the district to dictate it. So, I do not see the need for it, because the student and parents already have that right to request email. And it has to be on their side for the request to happen, for the consent to occur.

It cannot be dictated unilaterally by the school district. So I don't personally see, or professionally, I don't see a need for A, because the parents and student are already covered. And it has to come from them to use that medium for communication. Thank you.

DIVISION CHIEF CASTILLO:

Ms. O'Malley -- or not Ms. O'Malley. Ms. Adams?

MS. ADAMS:

Thank you. So, I do want to clarify, this is when the district files for mediation only, not the attorney. Sometimes the district -- so, this was just another way to ensure that the student and their family received notice of the mediation only.

There are other options on the district only -- or district's form for mediation only, such as facsimile in person, first class mail. So, this was just another way to ensure that the student and their family received service of the mediation only form.

But this would not be in regard to attorneys using the form.

DIVISION CHIEF CASTILLO:

Ms. Adams, would you like to make -- would anybody like to make a recommendation? I'm sorry. Would any Committee member like to make a recommendation regarding 13A?

TROTTER:

I'm sorry. Excuse me. We received a public comment via e-mail for 13A.

DIVISION CHIEF CASTILLO:

We've already taken the public comment section. So, we will take more after the -- there is a recommendation. Is there any recommendation for 13A that any Committee member would like to make?

MS. ADAMS:

Sorry about that. I just got kicked off and I'm back on. I would like to recommend that, I guess, I'm not sure what the appropriate verbiage is that we move forward with it as stated in the agenda.

ADMINISTRATIVE LAW JUDGE LUCIER:

I have worded a recommendation based on what she said during this. Do you want me to read that?

DIVISION CHIEF CASTILLO:

Well, let me try -- I guess for the recommendations requesting, that something for OAH to do. And Ms. Adams, the recommendation would be that the Office of Administrative Hearings update the request for mediation only by district or public agency form, proof of service to state service by electronic mail.

MS. ADAMS:

Correct.

DIVISION CHIEF CASTILLO:

Is there anyone from the Committee who would like to second that proposed recommendation. Since we do not have any member of the Committee requesting to second that recommendation, OAH will not be responding to that.

Is there any -- are there any other recommendations on this agenda item by any other Committee member. We see none. We will move on to agenda item -- there's no recommendation for OAH to respond to on 13A, we'll be moving to 13B.

13B, the -- it is recommendation that parents are personally served with due process documentation to ensure receipt. This is from Member Kamm. Member Kamm, would you like to start the discussion on this item?

MS. KAMM:

Yes, thank you. And obviously, this is related to 13A. We do have parents who are not getting the documentation for mediation or due process.

As we discussed, parents need to provide consent for electronic communications. But one of the other problems is that, you know, FedEx or UPS, they can just throw things on the porch or it goes under a bush. And parents are not always receiving documentation.

So, the recommendation is that they are personally served so that we know that the parents are actually getting the information. Because there have been parents who have not shown up at a due process hearing because they never received the information. They never even knew that they had been filed against.

So, I think that that's a very big problem. And we need to really ensure receipt of the documentation so that parents can show up at the hearings.

So, the recommendation is that parents are personally served with due process documentation to ensure receipt.

DIVISION CHIEF CASTILLO:

Ms. Kamm, for just point of clarification. Would this be documents served by the school district and OAH or just one?

MS. KAMM:

Well, I think it's important that they need to receive documentation from both. So, I would assume both if --

DIVISION CHIEF CASTILLO:

I'm just requesting clarification, because it was just not clear from this item.

MS. KAMM:

Yes, I believe both. And that's what the recommendation would be.

DIVISION CHIEF CASTILLO:

Thank you for the clarification. Any other comment on 13B by any Committee member? Ms. Adams.

MS. ADAMS:

Thank you, Your Honor. I think we need a little bit more detail. It's a little vague whether Ms. Kamm is referring to unrepresented clients or parents or represented parents.

Because if a parent is represented, then it is unethical for the district, who is also represented, for that attorney to have any communication including service of documents directly to a represented party.

DIVISION CHIEF CASTILLO:

Ms. Kamm?

MS. KAMM:

If that is not allowed, then obviously then that should not be happening. So, I'm not sure if that needs to be edited to just unrepresented parents. I would like to hear some discussion from some of the attorneys and from some of the parents before I revise anything on the recommendation. Thank you.

DIVISION CHIEF CASTILLO:

Okay. Just for the point here is that for the record, we will take comments on the agenda item as stated. You know, can have discussion with the Committee members public.

And then after that, recommendation from any member of the Committee on this. And the recommendation can be revised based on the comments that were made by the Committee and the public that informs the Committee members about how they want to phrase the recommendation for OAH to consider.

Ms. O'Malley?

MS. O'MALLEY:

I was going to suggest that it say that -- in my opinion, as an attorney, if the parents get the documentation directly, it shouldn't violate if it's the exact same document.

The LEA could give it to the parents. The OAH has to come through the attorney. But I can't see how that would violate if the -- if the parents were given directly by the LEA, by the school district, the due process hearing or the due process complaint that comes from the district.

It's coming from the district against the parents or the student, they should give that directly to them. Because they probably won't have an attorney yet. They'll have to get one once they know due process has been filed against them.

DIVISION CHIEF CASTILLO:

Mr. Palmer?

MR. PALMER:

My understanding that service of due process is a neutral process, that, you know, it's not the district serving, I don't think, that there would be like a service that would provide that service to the district.

So it's neutral, right?

DIVISION CHIEF CASTILLO:

The recommendation here is just regarding documents received by parents. That's the agenda item, so.

Ms. Mendez?

MS. ASHLEY-MENDEZ:

Yes, so I have had clients who I have represented, and the school district's attorneys served them personally. So the --

DIVISION CHIEF CASTILLO:

You froze up Ms. Mendez. You started, you've had some cases where school district attorneys have served personally?

MS. ASHLEY-MENDEZ:

Yes. Can you hear me now?

DIVISION CHIEF CASTILLO:

Yes.

MS. ASHLEY-MENDEZ:

And that has taken the parents off guard, because they are represented and they're getting documentation from the school district attorney. Whereas, they're understanding that they're represented by parents.

So, I would just be concerned about unrepresented versus represented.

DIVISION CHIEF CASTILLO:

Any other -- oh, Mr. Molina?

MR. MOLINA:

Yeah. As a parent, I think I'd agree. If I'm represented, I wouldn't -- I would like the paperwork to go to my attorneys. If I'm not represented, I would definitely like to make sure the paperwork gets directly into my hands.

I'd be very anxious about doing anything that circumvents that paperwork in my hand thing.

DIVISION CHIEF CASTILLO:

Any other comments by members of the Committee? Or attending by video conference. Oh, Ms. O'Malley.

MS. O'MALLEY:

All I was going to say was that recommendation that unrepresented parents are personally served with due process documentation.

DIVISION CHIEF CASTILLO:

Okay. We'll move on specifically to the recommendation after getting public comment.

Moving on to people attending by video conference. Educational Litigation, if they can be invited in?

TROTTER:

Educational Litigation, you have three minutes to speak.

EDUCATIONAL LITIGATION:

Thank you. I would really like to understand who Ms. Adams is specifically representing. I don't believe she mentioned it at the beginning of the meeting when she introduced herself.

But she definitely does not seem to be representing parents, in my opinion, from what I've heard. It seems that she's advocating for policies that would benefit districts and make it more difficult for parents.

But specifically on her comment regarding the unethical aspect of serving parents, there is a document by OAH and courts called proof of service. So let's keep that in mind.

So if it is unethical to serve parents, then OAH should file for sanctions against the law firm of Fagen, Friedman and Fulfroost, because they've served me many times. And they've also hired services that do not only service, but private investigations and private detective type work.

So, then OAH needs to be aware of that if Ms. Adams is correct, which I don't think she is. I've never heard of such a thing.

But the distinction between represented versus unrepresented parents is well taken. I know parents that were unrepresented, and that where the district was being represented by the law firm of Fagen Friedman and Fulfroost, and FFF and the district never served the parent the due process complaint.

And the parent found out that there was a due process complaint filed when they got the notice from OAH. So, it is a big problem. So, I will wholeheartedly support Ms. Kamm's recommendation. Thank you.

DIVISION CHIEF CASTILLO:

Thank you. Can you please invite in Sydney Jin (phonetic).

TROTTER:

Jin, you have three minutes to speak.

DIVISION CHIEF CASTILLO:

You can unmute yourself, Sydney Jin.

SYDNEY JIN:

I have a question. If a parent is represented and then the attorney drops the parent, and then the parent becomes unrepresented three days before hearing, then can the parent be served all the paperwork? How does that work?

Because you're saying that if the parent is unrepresented, they can be served the paperwork. If the parent is represented then they cannot be served the paperwork.

DIVISION CHIEF CASTILLO:

Tanya Whiteleather, if you can invite Ms. Whiteleather in.

TROTTER:

Whiteleather, you have three minutes to speak.

WHITELEATHER:

Thank you. I think, my understanding of this is that we are, there's a proposal to do an actual legal service of parents to give them due process.

Due process, of course, is required notice of a hearing and the opportunity to be heard. I've had two cases.

And I told this Committee back in August, one in Southern and one in Northern, where parents were given what we kind of call gutter service, FedEx threw it on a porch or something. Parent never got service. And then the hearing was supposed to proceed.

In one of them, OAH had to vacate the hearing, because the parent had never given written consent to email service. So, and I know from talking to a couple of parents, that at least one ALJ has said, oh, no, they can just -- to give you the initial complaint.

Not once a parent has consented to email, but to give the initial, all they have to do is send it out by FedEx, and FedEx can leave it on your porch or whatever.

State law is very clear that service of a complaint must be affected in such a way that the individual, the recipient, is going to receive it.

Having FedEx deliver, as the one ALJ I encountered said was perfectly legal, telling the parents, does not ensure that the parent receives it. And we do have a lot of people, parents, who don't come to the hearing table. And it's a big concern.

So, I just want OAH to not tell parents that anybody can hire FedEx to lob it over into the yard. We want to be clear and fair to parents so they do have due process. Thank you.

DIVISION CHIEF CASTILLO:

May you please invite in Adriana.

TROTTER:

Adriana, you have three minutes to speak.

ADRIANA:

Thank you. I would like to just go back to the IDEA, meaningful parental participation. Part of that is being informed. And part of that also includes consent.

So, it is important that we, as parents or they are -- we are served, personally served. Because as previously mentioned, you know, the mail sometimes does get lost. It goes to the neighbor's house, just doesn't get to where it needs to go.

So, you know, to avoid any delays on all ends, to avoid any confusions, that delivery is very, very important to parents and to all.

So again, I'd just like to go back to the IDEA, regarding meaningful parental participation and parental consent. And that definitely includes that mail being personally served. Thank you for your time and your consideration.

DIVISION CHIEF CASTILLO:

Thank you. Any email comment on 13B?

TROTTER:

13B.

DIVISION CHIEF CASTILLO:

No email comment? Ms. Trotter?

MS. TROTTER:

Nothing on 13B.

DIVISION CHIEF CASTILLO:

Any member of the public attending in person like to comment on 13B?

TROTTER:

None in Sacramento.

MR. PADRON:

I have my hand up.

DIVISION CHIEF CASTILLO:

Okay. Before, would anybody -- Mr. Padron, before we -- your comment?

MR. PADRON:

Yes, I would like to have some clarification before we get in -- further in the weeds on this, is if a personal service is hired to deliver the complaint, let's say. What are the requirements, maybe someone knows, maybe an attorney knows, is that how many times do they need to come back if no one is home? Or if they're not opening the door because they're afraid of who the person is?

Is there a requirement that they have to leave it at the door on the third attempt? Does anyone have any information concerning that before we get deeper into the weeds on this?

DIVISION CHIEF CASTILLO:

Any member of the Committee know the answer to that question? Or care to comment? I cannot compel any member of the Committee to give an answer or talk, Mr. Padron.

MR. PADRON:

That's fine. Maybe it was towards the person that submitted it, Ms. Kamm.

DIVISION CHIEF CASTILLO:

Mr. Shaw, actually have significant --

MR. SHAW:

Sure. So, my understanding is this is a service of process -- service of complaint and pleadings, et cetera is statutorily defined. And I think one thing we have to bear in mind is it's also designed in a way that I think is -- gives options for a parent who's unrepresented to be able to effectuate service via mail or facsimile.

I think the one exception is email does require prior consent. I don't have the code section in front of me. I think it's a regulation.

But in any event, my concern is this is more of a legal fix that I'm not sure. I mean, if this passes the Committee, I suspect we'll get a response back from the OAH citing to the appropriate code section explaining this is, you know, what the law says.

DIVISION CHIEF CASTILLO:

Would any member of the Committee like to make a recommendation regarding 13B? Ms. Mendez?

MS. ASHLEY-MENDEZ:

Yes, I would like to make a recommendation that it be for unrepresented parents.

DIVISION CHIEF CASTILLO:

So, the recommendation would be that unrepresented parents are personally served with due process documentation by both district and OAH to ensure receipt?

MS. ASHLEY-MENDEZ:

Correct.

DIVISION CHIEF CASTILLO:

Is there a second? Do you have that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

I do.

MR. SHAW:

I would second.

DIVISION CHIEF CASTILLO:

What, is there a second to this?

MR. SHAW:

I would second.

DIVISION CHIEF CASTILLO:

Okay. Is there any comment on the proposed recommendation? Ms. O'Malley?

MS. O'MALLEY:

One of the things that keeps coming up is how things can be thrown on the porch, and especially in apartment buildings it can just be left generally in the building mail section, which has happened to a client of mine.

So, I agree with the unrepresented parents. Serve with due process documentation. And it should always be sent with a signature requirement and signature to ensure receipt.

DIVISION CHIEF CASTILLO:

Any other comments from the Committee on the proposed recommendation for 13B. Okay. Going to members of the public? Education Not Litigation, could you please invite this person in?

TROTTER:

Education Not Litigation, you have three minutes to speak.

EDUCATION WITHOUT LITIGATION:

Thank you. And thank you, Ms. O'Malley, for making that clarification. I think your proposal is really well-reasoned. And I would hope that the maker of the recommendation would accept your amendment.

I just found out that Ms. Adams is with the law firm of Fagen, Friedman, and Fulfrost. I didn't know that when I commented about her. So, I would urge the Committee to remember that, that Ms. Adams is not here to advocate for the best interest of parents.

And actually, we don't know who she's advocating for. Because I think she said earlier she was a district representative. I think the public on the Committee has a right to know which district is paying her to be on this Committee. Because unlike the parents, I doubt that she's volunteering her time.

But the public has a right to know that. And the Committee members, especially those that are representing the parents, I would urge you to think about her representing this law firm who is very problematic in the parent community, who has done things that are, in my opinion, unethical.

So, it's really rich for her to be thinking about and talking about ethics and her version of the law, which is completely wrong. Because that's what her law firm espouses, their version of the law.

So, it is very unfortunate, and I would urge the Committee members to think of the reputation of this law firm who recently has been put under investigation by the Antelope Valley School District and also the California Civil Rights Department. Thank you.

DIVISION CHIEF CASTILLO:

Could you please invite Adriana in?

TROTTER:

Adriana, you have three minutes to speak.

ADRIANA:

Thank you. Just listening to the previous commenter, that really worries me as a parent. I'm just wondering how the members are elected, and is it appropriate to have a member with those qualities, somebody representing the district?

And so, what is the point of this? Are we here to represent the vulnerable population, students, or district. So, I'm very worried.

DIVISION CHIEF CASTILLO:

Thank you. Any email comments on agenda item 13B?

TROTTER:

Yes, we have an email comment. The email comment goes as, Ms. Adams, you represent the school district. You work for the F3 Law Firm, the firm notorious for being bullies to parents as well as hired investigators to follow parents.

I am one of those parents who have been bullied by one of your F3 law attorneys, Karen Samman, at several of my IEP meetings.

No parent should have to feel unsafe at these school meetings with the possibilities for F3 Law to work with the school district to file against the parent, simply because they want the school districts.

Emails are never secure and should not be used to communicate with parents. I live in a place where parents don't have access to a reliable connection.

Parents should be given the right to choose how they want to be served in getting these notifications about due process. In addition, emails are subject to interception by hackers. End of comment.

DIVISION CHIEF CASTILLO:

Any member of the public attending in person like to comment?

TROTTER:

No public comments in person in Sacramento.

DIVISION CHIEF CASTILLO:

All right, we'll take -- are there any other comments from members of the Committee. I'll take a vote on the recommendation made by Ms. Mendez for 13B.

MS. KAMM:

Excuse me. I'm the one who had 13B, and I would like to restate it based upon all of the input. Is that okay? That's what I understand the process to be. Is that correct? I'm not hearing anything.

DIVISION CHIEF CASTILLO:

What I'm saying is that I did ask for recommendations from any member of the Committee and any member can make a recommendation.

So, why don't we take a vote on 13B by Ms. Mendez and then Ms. Kamm, I'll asks if you want to make a further recommendation on this.

Because in the past for agenda items, we've had multiple recommendations from Committee members on an agenda item.

MS. KAMM:

I'm sorry, but that's not my understanding. You gave the other Committee members a chance to restate it.

You were asking for input from Committee members. And then you gave a chance for the person who provided the agenda item to restate it. And it looks like you are not providing me that opportunity.

Based upon, I just heard from the public and the Committee members. And so based upon that input, I would just like to change the verbiage a little bit as you allowed other Committee members to do.

DIVISION CHIEF CASTILLO:

Ms. Mendez, since this -- the recommendation that I took was from you, would you like to rephrase it? Withdraw it?

MS. ASHLEY-MENDEZ:

I will withdraw it at this time.

DIVISION CHIEF CASTILLO:

Okay. Ms. Kamm, I'm not trying to cut you off, but I would have, if she didn't, I would have taken a recommendation from you and gone through the similar process.

MS. KAMM:

I'm sorry, but that process was not clear to me. You allowed other -- you specifically requested from the person who provided the agenda item, which previously was Ms. Adams. And yet you are denying me that same opportunity.

So, this process is not clear at all. I don't believe that another Committee member can reword the -- can reword the agenda item.

It's my understanding they can provide input. But then the person who provided the agenda item can actually make the rewording.

Because we also got input from Ms. O'Malley that you are not including in Ms. Mendez's input. So I would like to amend the recommendation to include input from both of them. And I would like to be allowed that opportunity just as you allowed other Committee members to do so.

DIVISION CHIEF CASTILLO:

What would be your recommendation for 13B, Ms. Kamm?

MS. KAMM:

Thank you. My recommendation is that -- the recommendation is that unrepresented parents are personally served with due process documentation and requiring a signature to ensure receipt.

DIVISION CHIEF CASTILLO:

Would you like to repeat that, Ms. Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

Yes. It is recommended that unrepresented parents are personally served with due process documentation and requiring signature to ensure receipt.

DIVISION CHIEF CASTILLO:

Is that correct? Does that encompass correctly, Ms. Kamm, your proposed recommendation?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Okay. We'll take a comment on this revised recommendation. Ms. O'Malley?

MS. O'MALLEY:

I was going to suggest that it -- the only thing I would add would be a parent's signature so they can't just get someone in the building, any person to sign it.

DIVISION CHIEF CASTILLO:

Would you like to revise it, Ms. Kamm?

MS. KAMM:

Yes, I will revise it. Thank you, Ms. O'Malley. I will revise it to that it requiring parent's signature to ensure receipt.

DIVISION CHIEF CASTILLO:

Do you have that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

I have, it is recommended that unrepresented parents are personally served with due process documentation and requiring parent signature to ensure receipt.

MS. KAMM:

Yes, thank you.

DIVISION CHIEF CASTILLO:

Is there a second on this proposed recommendation for 13B. Ms. O'Malley, is that a second?

MS. O'MALLEY:

I second the motion.

DIVISION CHIEF CASTILLO:

Okay. Ms. McCoy, do you have a comment?

MS. MCCOY:

Thank you. I just have one concern about the signature, requiring a parent signature. Some of these cases involve children whose parents are not the educational rights holder.

So, I would like to suggest that it be revised to the educational rights holder or parent. I mean, you know, actually, it should be the educational rights holder.

Because when the parent is the educational rights holder then that would be fine. But in some cases, the parent is not the educational rights holder.

DIVISION CHIEF CASTILLO:

Ms. Kamm, would you like to make a revision?

MS. KAMM:

Yes, I'm fine with revising that to be the educational rights holder.

DIVISION CHIEF CASTILLO:

Okay. Mr. Shaw?

MR. SHAW:

I'm all for figuring out a way to ensure that parents are served if the district is filing a due process complaint. I'm just concerned, what happens in the event that the parent refuses to sign receipt of the document?

DIVISION CHIEF CASTILLO:

Ms. Kamm?

MS. KAMM:

Well, I assume that there are ways of handling that. But right now we are talking about, I think, the broader issue of things being thrown over the fence or in the bush and parents not even getting the documentation.

If Mr. Shaw would like to add another agenda item at the next meeting to address that particular circumstance, I'm sure he's welcome to do that.

DIVISION CHIEF CASTILLO:

Ms. O'Malley?

MS. O'MALLEY:

I understand his concern. But I agree with Ms. Kamm that he can suggest another recommendation for the next meeting.

I think this one is particular and necessary, especially for families that live in apartment buildings. It's been signed by anybody and then left somewhere. And they often don't get it, let alone the bushes and things.

But that becomes a real problem for people that live in, you know, multiple dwelling situations. And I think this signature by the educational rights holder protects the parent and the student, which they have a right to have that protection.

DIVISION CHIEF CASTILLO:

Any other comments on this proposed recommendation by members of the Committee? Ms. Mendez?

MS. ASHLEY-MENDEZ:

Yes, I just wanted to go over what personal service means when it can be -- it has to be a person, the server, right, handing the legal papers to whoever the person is that is being sued.

And if the party being served does not want to take the papers, that server can leave the papers on the ground in front of him or her, and it is not required for them to sign anything.

So, I am concerned about what Mr. Shaw has brought up, that if we're asking for that extra requirement that this may cause some --

DIVISION CHIEF CASTILLO:

Ms. Kamm?

MS. KAMM:

I'm sorry, she cut out a little bit at the end. So, I wasn't quite sure if there was a question.

DIVISION CHIEF CASTILLO:

Ms. Mendez --

MS. ASHLEY-MENDEZ:

No, I was just adding --

DIVISION CHIEF CASTILLO:

-- was there anything further? Do you want to repeat yourself, Ms. Mendez, to make sure that everyone can hear?

MS. ASHLEY-MENDEZ:

Yes, I apologize. I was just adding that I think it's important for parents to be personally served. But there just may be some other things that we need to figure out.

MS. KAMM:

Okay. So, I appreciate the input. I am not an attorney, so I appreciate the, you know, nuanced information here.

If it is true that when they are personally served and there is contact with the person, and I mean, we're making a lot of assumptions here that I am not familiar with the intimate details of the law.

But if it is true that they can just set the documentation down if they have made contact with the person, I guess perhaps then it's if the signature is not the issue, then there needs to be some kind of way to verify receipt.

So I would be happy to change the recommendation so that unrepresented parents are personally served with due process documentation requiring verification of the personal service.

DIVISION CHIEF CASTILLO:

Do you want to -- do you have that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

What she changed -- I --

DIVISION CHIEF CASTILLO:

Can you repeat that, again, proposed recommendation, Ms. Kamm?

MS. KAMM:

Okay, instead of the signature requirement, that it requires verification of the personal service.

ADMINISTRATIVE LAW JUDGE LUCIER:

Judge Castillo, would you like me to read what I have?

DIVISION CHIEF CASTILLO:

I'm sorry.

ADMINISTRATIVE LAW JUDGE LUCIER:

Would you like me to read it?

DIVISION CHIEF CASTILLO:

Yeah, can you repeat it?

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that unrepresented educational rights holders are personally served with due process documentation and require verification of the personal service to ensure receipt.

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Is that okay? Is that correct, Ms. Kamm?

MS. KAMM:

Yes, thank you.

DIVISION CHIEF CASTILLO:

Okay, Member O'Malley.

MS. O'MALLEY:

I really disagree with taking out the signature, because they have other means that they will then have to verify why they use the other means.

I really disagree with taking out a signature by the educational rights holder to protect their rights. Because then the burden becomes on the server to prove what else they had to do to leave it.

We don't want to let that burden be lowered by saying, oh, I left it in the building near their mailbox or other things. They could say, oh, I verified it.

Verifying is too, in my opinion, vague of how that allows the party serving them to claim they did. I would like to keep in there that signature by the educational rights holder.

And if they refuse to serve, there are other means. But it would put the burden on the service and those delivering it to prove verification.

And I want the burden to stay on their end, not just on the server saying, oh, yeah, I did it. And being able to verify it by I left it near their mailbox in the apartment building or whatever. That's my concern.

I don't want to lower the burden on service to the parents. I want the burden to stay high and signature does that. Then if they don't get a signature, they do have other options. But the burden is on them to then prove it.

UNIDENTIFIED VOICE:

Judge Castillo, just a point of clarification that you went to Committee comment before we had a second on the amendment.

DIVISION CHIEF CASTILLO:

Okay, thank you. I'm thinking right now, just looking at the, any provision -- revision.

So, Ms. Kamm, would you like to keep -- for me to go to a second -- ask for a second to keep the comment, I mean, to keep your proposed recommendation as is?

MS. KAMM:

I'm not sure about the procedures here. But I see that Daniel Shaw and David Palmer have their hands raised. So, I would be happy to listen to their input before revising or keeping the recommendation.

DIVISION CHIEF CASTILLO:

DIRECTOR MORAZZINI:

Judge Castillo, this is Director Morazzini. We would need a second to continue this. We need an actual --

DIVISION CHIEF CASTILLO:

Okay.

DIRECTOR MORAZZINI:

-- recommendation with a second to move forward.

DIVISION CHIEF CASTILLO:

Okay. So, why don't -- is there a second to Ms. Kamm's proposed recommendation? And can you repeat that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

Yes. It is recommended that unrepresented educational rights holders are personally served with due process documentation and requiring verification of the personal service to ensure receipt.

DIVISION CHIEF CASTILLO:

Is there a second on that? Mr. Palmer?

MR. MOLINA:

I'll second that.

DIVISION CHIEF CASTILLO:

Mr. Molina has seconded. Mr. Palmer?

MR. PALMER:

I was just going to say, would it make it simple just to say as required by law for the service and not get into defining all that, just as required by law.

MS. KAMM:

It helps the burden.

DIVISION CHIEF CASTILLO:

Any other comment before I go back to Ms. Kamm? Mr. Shaw?

MR. SHAW:

Yeah, again, I think it's an important issue that parents are served with district filed complaints, particularly in light of the timelines and there being no resolution session because the hearing dates are set very quickly.

But in any event, like even the way this is framed is concerning to me, because it seems to say the only way of serving is via personal delivery or personal service. When in my mind, what I would want personally is every means possible getting that information in to the family.

So not personal service being the only option. But first class mail or overnight delivery, et cetera.

DIVISION CHIEF CASTILLO:

Ms. O'Malley? You're still on mute, Ms. O'Malley.

MS. O'MALLEY:

My apologies. I know I sound like I'm just repeating myself. But when you live in multiple dwellings, getting those documents can be haphazard at best.

They often leave them in the lobby and say, oh, I met the requirements of the law. The requirements of the law, to me, give the delivery service the control and not the recipient.

And we're trying to protect the recipient because their rights are the ones that are protected by law. That's why I feel that extra measures are needed in this case, such as the signature by the educational rights holder.

DIVISION CHIEF CASTILLO:

Mr. Molina.

MR. MOLINA:

And I don't think any of this precludes that they send additional paperwork through other means. So, for example, if they send them an e-mail, but they also must send them a direct paper service. I think it's setting a base standard.

DIVISION CHIEF CASTILLO:

Any other comments from the Committee. Before I go to public comment, Ms. Kamm, would you like to make any changes or leave it as is?

MS. KAMM:

Yes, thank you. I do appreciate Ms. O'Malley's input. And so, I would like to revert back to requiring the educational rights holders signature with the rest left as is.

DIVISION CHIEF CASTILLO:

Do you have that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

I just want to be clear that it is in lieu of requiring documentation. So, it is the previous language?

DIVISION CHIEF CASTILLO:

It would be the previous one where, because you had added, and just correct me if I'm wrong, Ms. Kamm, you had added -- you originally had requiring signature. And then you changed it to verification.

So, you want to go back to what you had before is requiring signature of the educational rights holder?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Can you repeat that, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that unrepresented educational rights holders are personally served with due process documentation and require a signature of educational rights holders to ensure receipt.

DIVISION CHIEF CASTILLO:

Is that correct, Ms. Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Is there a second to this?

MS. O'MALLEY:

I second.

DIVISION CHIEF CASTILLO:

Ms. O'Malley seconds. Is there any further public comment, I mean not public -- Committee comment on this recommendation -- proposed recommendation. Okay, we'll get public comment.

Education Not Litigation, if you could please invite this person in?

TROTTER:

Education Not Litigation, you have three minutes to speak.

EDUCATION NOT LITIGATION:

Thank you, I really appreciate the discussion and the effort to try to make sure that parents receive documents.

It's been a problem in the past. And I think it should be left up to the parent to decide how they want to be served. But right now it's really not clear.

So, I'm sensitive to Mr. Shaw's comments about giving the parent all the options for service. This is just in the event that the parent does not choose or has not consented to being served by email.

And to Ms. Kamm's point, there seems to be a double standard here. And there is a double standard that I've experienced while in the process of serving.

As an example, OAH had very tough rules on me as a parent whenever I issued a proof of service to the district. But there was a lot more loosey-goosiness when the district was giving me documents.

And at one point, the district canceled the mediation only. And it wasn't even the district, it was the SELPA, when the SELPA director had already been warned by OAH multiple times that they were not allowed to speak on behalf of the district and that they could not represent the district. And yet, OAH closed the mediation based on a verbal from a SELPA employee.

So there seems to be a double standard here. And I would really urge OAH to try to remain as neutral as possible. Because right now the public, specifically the parent community, does not see OAH as a neutral party. Thank you.

DIVISION CHIEF CASTILLO:

Thank you. Sydney Jin, if you can please invite this person in?

TROTTER:

Jin, you have three minutes to speak.

SYDNEY JIN:

Hi, I'm speaking from personal experience. I receive a -- I've been served -- I received an OAH due process, a FedEx package that was delivered to my door.

I didn't expect it. I didn't know what it was. I opened it. I thought it was some kind of spam. I was shocked.

And I was represented by a lawyer. But my lawyer wasn't even aware of this. And it wasn't served to my law firm, so it was weird.

But luckily for me, it was actually -- I actually live in an apartment complex with 30 units. And luckily for me, it was actually delivered to my door. Because a lot of times I get packages and it doesn't make it to my door.

And they get delivered to the apartment complex next door. It gets delivered to my unit, it's outside the complex, it doesn't get delivered or it's downstairs in the mailbox, it doesn't make it to me.

So I'm glad that you guys made the provision that it needs to be personally signed. It's really important that when it's due process and we -- and the parent, the educational right holder needs to appear in court that we received the due process hearing.

The parents need to be informed and know. Thank you.

DIVISION CHIEF CASTILLO:

Thank you. Any email comment?

TROTTER:

No comment.

DIVISION CHIEF CASTILLO:

Any member of the public attending personally would like to make a comment?

TROTTER:

None in person in Sacramento.

DIVISION CHIEF CASTILLO:

And none in San Diego. Okay. We will take a vote now on 13B. And then after the vote we'll take a 10-minute break.

So, I will be calling roll on 13B, unless there are any other comments after the public comments, that any of the Committee members would like to make.

MR. SHAW:

Can you just --

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Can you just restate it?

DIVISION CHIEF CASTILLO:

Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that unrepresented educational rights holders are personally served with due process documentation and requiring signature of the educational rights holders to ensure receipt.

DIVISION CHIEF CASTILLO:

Any other comments from the Committee?

MS. KAMM:

Yes, I would like to make a comment.

DIVISION CHIEF CASTILLO:

Yes. I guess a revision based upon the public comments.

The revision would be -- I think the clarification here is that we're talking about the initial -- the initial communication of the due process complaint. And perhaps that wasn't clear in here.

So, I think perhaps we could add at the end, unless the educational rights holder has consented to other means of communication.

That way, I believe that that addresses some of the other issues that have been brought up. So, the personal service is primarily the avenue of communication unless the educational rights holder has consented to other means.

DIVISION CHIEF CASTILLO:

Would you like to repeat that, Judge Lucier?

DIVISION CHIEF CASTILLO:

It is recommended that unrepresented educational rights holders are personally served with due process documentation and requiring the signature of the educational rights holders to ensure receipt, unless the educational rights holder has consented to other means of communication.

DIVISION CHIEF CASTILLO:

Ms. Kamm, is that correct?

MS. KAMM:

Yes, thank you.

DIVISION CHIEF CASTILLO:

Is there a second? Mr. Palmer, if you could say it on the record.

MR. PALMER:

I second.

DIVISION CHIEF CASTILLO:

Great. Any comments? Ms. O'Malley?

MS. O'MALLEY:

I just think the personal service doesn't obfuscate other means that they can be done. It just makes sure that that is done.

I just remain adamant that it's necessary. And I don't want to give -- they -- it doesn't mean they -- that statement doesn't mean they can't do other things. It just says they must do that one.

By its -- it doesn't say that is the sole thing. It just says that one must be done. It doesn't -- it doesn't eliminate other means that parents have consented to. It just means that one must also be done.

So, I would just keep it as the original -- as the original one without that out.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

Yeah, I guess I interpreted this one a little bit different. To me, this sounded like the only means in which you can serve.

And I think in any event, under the law, there are several different methods that provide service of process with the due process complaint.

And now we're suggesting to make personal service even more restrictive requiring a signature. Which is just going to encourage district filed cases to be served via first class mail or overnight delivery via personal messenger or whatever.

So, I just, I understand the concern. I'm not so sure this is the place where we can resolve that issue, because I think it's statutorily defined.

And my concern is making something more problematic. So, instead of going personal service to ensure a parent gets served with the complaint, they're just gonna send it in the mail.

DIVISION CHIEF CASTILLO:

Any further comments from the Committee? From members of the public, any comment? Any email comment?

TROTTER:

No email comments received.

DIVISION CHIEF CASTILLO:

Any comment from members of the public attending in person?

TROTTER:

No in-person commenters in Sacramento.

DIVISION CHIEF CASTILLO:

Nor in San Diego. With that, we'll take a vote on agenda -- propose recommendation for 13B. Judge Lucier, if you can repeat it.

ADMINISTRATIVE LAW JUDGE LUCIER:

Certainly. It is recommended that unrepresented educational rights holders are personally served with due process documentation and requiring signature of the educational rights holders, to ensure receipt unless the educational rights holder has consented to other means of communication.

DIVISION CHIEF CASTILLO:

Thank you. Taking a vote. Mr. Shaw?

MR. SHAW:

As written, I don't support it.

DIVISION CHIEF CASTILLO:

So, is that no?

MR. SHAW:

Correct, yes.

DIVISION CHIEF CASTILLO:

Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Yes, for Member McCoy. Member Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Molina?

MR. MOLINA:

Yes. Member Adams?

MS. ADAMS:

No.

DIVISION CHIEF CASTILLO:

No. For Southern California, Member Singh?

MS. SINGH:

Yes.

DIVISION CHIEF CASTILLO:

Yes. From Southern California, Member O'Malley?

MS. O'MALLEY:

Yes.

DIVISION CHIEF CASTILLO:

No.

MS. O'MALLEY:

I said yes.

DIVISION CHIEF CASTILLO:

Oh, yes? Okay.

MS. O'MALLEY:

Yes.

DIVISION CHIEF CASTILLO:

Yes, got it, you as yes. Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Yes. So, the vote is in Northern California, four yes, two no -- or three yes, two no. And then in Southern California, six yes, no no's. So the recommendation has passed and OAH will respond to this.

At this time, we're going to take a 10-minute break. And we'll be back at 20 after the hour.

(Off the Record)

DIVISION CHIEF CASTILLO:

Okay. Thank you. It is 12:20 p.m. This is just a reminder to members of the Committee that this meeting runs to 1:00 p.m. We'll discuss agenda items through 1:00 p.m.

We're going to agenda item 14, and I will read it. When OAH emails the documents for parties to view, it is not easy to locate on the OAH website. And sometimes it can take up to a few minutes to locate the document, as only identifiable information about the document is the case number with no case name or document name type indicated in the email.

Apparently, on the labor employment side, the document title is listed in the email. But for special education, it is not.

For members of the public, I'm just going to give a description of our secure file transfer system with this relates to. For service of the document, OAH does not send a regular email to the parties which has an attachment containing the document.

We send the documents through our secure file transfer system. We place the document in there and then that system generates an email to the recipient at the email address that we are given by the party or person. And the person receives an email that the document is in the secure file transfer system.

They click on the link. They log in with their username and password. And then they may access the document within our secure file transfer system.

This agenda -- and the labor employment side is referencing to our general jurisdiction. We have our special education division here. And then the other side which handles other matters.

And hearings for public agencies and state agencies is our general jurisdiction division.

So, Member Adams, this is your proposed topic.

MS. ADAMS:

Thank you, Your Honor. We're just --

DIVISION CHIEF CASTILLO:

We can barely -- there you go.

MS. ADAMS:

We're just asking that if there could be a title included in that email when we're notified the document is ready to be viewed, that would be extremely helpful.

What happens is that my clerical team will click into the link. And it's not the document necessarily that comes up, it's the whole case file. And sometimes, like, you have to go and filter the dates.

But sometimes it's not the first document, so it takes them a few minutes to figure out what document was just sent to us. So, it was just for ease of locating the document.

DIVISION CHIEF CASTILLO:

Are there any other comments on agenda item 14 from members of the Committee? Mr. Palmer?

MR. PALMER:

I would be interested in hearing an example of what that name would be and most curious if it would include students' names.

DIVISION CHIEF CASTILLO:

Ms. Adams?

MS. ADAMS:

That's a good question. I understand, you know, confidentiality. It would be the title of the document. And if the student's names can be replaced with the word student. Or if it's from the district, district. So the student's name is not used.

DIVISION CHIEF CASTILLO:

Ms. O'Malley?

MS. O'MALLEY:

I'm not clear what the actual proposal is. Number 14 talks about a problem. But I'm not sure what the actual proposal is.

DIVISION CHIEF CASTILLO:

At the moment, I have not asked for a proposed recommendation of that.

MS. O'MALLEY:

Okay. Well, I think having -- I have the same issue when I go into -- when I'm notified there's a case, the whole case file comes up.

And I have to figure out which one it is that was just sent to me as the attorney. So, a file name would be helpful so that we make sure we respond promptly, especially on behalf of a client, we can respond promptly and make sure there's no delay.

DIVISION CHIEF CASTILLO:

I'm just writing down your comments. Ms. Kamm?

MS. KAMM:

Yes, I'm also a bit confused as Mr. Palmer noted. If you're looking for a case name, and then Ms. Adams just said the student's name would be replaced with student. So, wouldn't all of the case names either be student v. district or district v. student?

I'm not quite sure I'm understanding what specific information she is trying to look for. Other than if it gives the case a number, I don't understand what other information she is requesting.

DIVISION CHIEF CASTILLO:

Ms. Adams?

MS. ADAMS:

Thank you, Your Honor. The title of the document.

DIVISION CHIEF CASTILLO:

Any other? Oh, Mr. Shaw?

MR. SHAW:

Just a followup question. Are you talking about the title in the document of the email notifying you that there is a document ready to be reviewed online through the portal?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

Ms. Kamm.

MS. KAMM:

Since I'm not an attorney, I'm a little confused. What different types of documents are you referring to? Can you give us some examples of the titles of the documents that you're referring to then?

DIVISION CHIEF CASTILLO:

Ms. Adams?

MS. ADAMS:

There is quite a lot of documents that are exchanged throughout the litigation process. So, it would be for motions, responses to complaints, I mean, anything that the parties are filing.

It's just a request to make it easier to locate the document. Like the previous -- Ms. O'Malley had stated. When you click the document, it goes to the entire case of documents. So, it's an easier way for us to locate which document is available to be viewed or was just filed.

DIVISION CHIEF CASTILLO:

And just for clarification for members, the secure file transfer system is how OAH sends documents. So, the parties will just receive documents from there.

And then they will serve documents to OAH through the secure file transfer system. But parties are not serving each other through the secure file transfer system.

Mr. Shaw?

MR. SHAW:

Yeah, just to maybe answer questions for people who aren't an attorney. What happens is, is when the OAH uploads, let's say an order, an order on a continuance request or request for mediation or on a motion.

You will receive, as the attorney or parent, if you've signed up for that system, an email that lets you know, it gives the case number, that there's a document ready for review.

It doesn't tell you what that document is. You have to log in to the secure e-file system in order to access that document.

So, my understanding of what Ms. Adams is suggesting, is that email that comes to you letting you know that there's a document ready for review also explains what that document is, as opposed -- no, that's not it.

Well, that was my understanding. So, maybe I'm confused.

DIVISION CHIEF CASTILLO:

Ms. O'Malley.

MS. O'MALLEY:

Well, my experience is that I get a notice on email that there's a document to be reviewed. It doesn't tell me what document. It just says there is a document.

Then you go in, you open up that case file under OAH. And the entire -- as Ms. Adams said, the entire file comes up. And as a case goes on, there are a lot of files.

And often the file that you're supposed to review isn't at the bottom or the top. It will sometimes come in the middle. And it can be problematic to make sure you're looking at the exact file they just sent you because you didn't get a name.

And all the files have similar names often. And you're trying to figure out which one just came in. And you often have to go through each one to see, and it can take time. And I do it personally because I want to make sure I don't miss new files that come in.

But it does take time, and it can be confusing to make sure you get the exact document they just sent you. As a file goes on there are a lot of files. And they just come up in a list.

And the file it sent you is not always at the top or the bottom, it can end up in the middle of that whole group of files.

And so that's why if the name, if some kind of name were attached, you would have an idea to make sure you were getting the correct file.

And for me, representing parents and the students, it's a real concern to be very timely with all of that.

So, the simpler it is for us to make sure that we identify the exact file that's being sent, the better.

DIVISION CHIEF CASTILLO:

Mr. Padron?

MR. PADRON:

Yes. I'm familiar with the process as well. And so, too expedite it and not spend too much time trying to figure it out, what I do is I look at the date that they send you the email.

And then it has the date on the system. When you click on the whole file folder, it has a date when the document was posted. And that gives you a timeframe what document you're looking for.

And in particular as well, you know, you're familiar with the process and where the case is at and the type of document you're expecting. So, it's not really complicated. I think we're making it more complicated than it is.

DIVISION CHIEF CASTILLO:

Ms. Kamm.

MS. KAMM:

Thank you. I think maybe Mr. Padron kind of answered my question. Because I was thinking if this is like an email or a Google Doc or something. Usually there's a way to see, you know, things that are read or unread. Or there's a date and time as to when the document was posted.

So, it sounds like there already is a date and time that it's posted. So, if you could just sort by the date, that kind of resolves the issue.

So, I don't really see the point of this agenda item. Thank you.

MR. SHAW:

Yeah, I was just going to point out that if you click on the date. You can actually sort by case name, by date, by several other factors in order to get those things to the top.

We manage a pretty heavy caseload, because we have several attorneys. And so, we'll often download as well the Excel sheet. It allows you to export everything.

And if you do that, all your documents with numbers -- or with case numbers and name of the document and the student's name are all in chronological order. And there's little drop down boxes that you can tweak that stuff as well.

I misunderstood the proposal. I thought it was the email. Because I think it would be great if that initial email we have does let us know what the document is. Because we don't know what's being filed. We just see a case number.

And if you have several cases, I mean, you know, you don't know which case it's even assigned to other than having to figure out which case number, you know, that's attached that student.

But if that's not the proposal, then there is an easy way of sorting by date.

DIVISION CHIEF CASTILLO:

Ms. Adams?

MS. ADAMS:

Mr. Shaw is correct, that is the proposal, is the email. To have the name of the document in the email.

DIVISION CHIEF CASTILLO:

Any further comments from the Committee? From the public? Can you please invite in Education Not Litigation?

TROTTER:

Education Not Litigation, you have three minutes to speak.

EDUCATION NOT LITIGATION:

Thank you. Well, I'm really sorry to see how this Committee is being used for the personal interest of Ms. Adams and her law firm.

Think about what she said at the beginning. This will make it easier for me and "my team to handle."

So in order to accommodate her, her law firm, the multiple lawyers in her law firm, which is a giant corporation, the paralegals, the secretaries, plus the school district people that team up with her against the parents, plus the SELPA people that are multimillion-dollar public agencies. OAH has to bend over backwards.

And this Committee has to give that issue time. Not to mention There should be a no vote on this item For the specific reason that it's not compliant with Bagley-Keene agenda items.

The agenda items, number 14. It reads like a lawyer wrote it. It is not specific. It is not descriptive. I was very confused as a member of the public.

And I'm glad to see Mr. Shaw, who is an attorney, because I'm not an attorney, I'm a parent. I'm glad to see that Mr. Shaw was confused, and he thought it was something else. And nobody knows what this agenda item is about other than FFF who wrote it.

So, I would urge a vote of no, because it is out of compliance with the Bagley-Keene Act. It is not clear. And then the discussion goes into a completely, totally different direction. And it's basically the FFF agenda. So, please vote no on this. Thank you.

DIVISION CHIEF CASTILLO:

Can you please invite Adriana?

TROTTER:

Adriana, you have three minutes to speak.

ADRIANA:

Thank you. So, my -- what my understanding why we are here is because we are, as a team -- or as the team, deciding for the team, not for individual team.

And we shouldn't be here talking about what would work best just for some -- one party, as they referred it to my team in regards to this specific proposal. So, this was concerning to me.

And I would kindly request that the -- that you support a vote for no on this matter. And a side note, I love Mr. Shaw's sweater.

DIVISION CHIEF CASTILLO:

Thank you. Any email comments?

TROTTER:

No comments for this agenda item.

DIVISION CHIEF CASTILLO:

Any request for public comment in Sacramento?

TROTTER:

No Sacramento.

DIVISION CHIEF CASTILLO:

Okay. So, Ms. Adams, do you have a recommendation that you'd want the Committee to -- OAH to consider?

MS. ADAMS:

Yes, thank you. My recommendation is that when the email informing parties that there is a document to view, it not only includes the case number but includes the title of the document.

DIVISION CHIEF CASTILLO:

Repeat that, Judge Lucier, when you're finished.

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that the email OAH sends parties, informing parties that there is a document to view, include the case number and the title of the document.

DIVISION CHIEF CASTILLO:

Is that correct, Ms. Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Is there a second to this recommendation? Member Shaw?

MR. SHAW:

Yeah, I'll second that.

DIVISION CHIEF CASTILLO:

Just for a technical note, I think because this relates to a question Mr. Palmer had earlier.

The name of the student does not go in the title of the document. It will say student. But it will not have the student's name.

Any further comment on this proposed recommendation from the Committee? Mr. Shaw?

MR. SHAW:

Yeah, I would just urge Committee members to consider this because, you know, as a practitioner, when you get an email or you're getting multiple emails a day letting you know there's documents. You don't know if one's just a case dismissal or something that doesn't need your attention.

So, you're constantly having to go back and sort through the system to see if it's something of importance. So, I wholeheartedly approve this recommendation.

DIVISION CHIEF CASTILLO:

Any other comments from the members of the Committee? Any public comments? Can you please invite in Education Not Litigation?

TROTTER:

Education Not Litigation, you have three minutes to speak.

EDUCATION NOT LITIGATION:

Thank you. It's very concerning that, once again, the motion before the Committee is not -- it's completely different what was on the agenda. So, the public did not have a right to participate.

I saw the agenda before the meeting. And what the motion that was proposed, the recommendation that was proposed, is completely different. It's derailed into something else.

And I'm disappointed that Mr. Shaw, being an officer of the court, would go along with a potential violation of the Bagley-Keene Act.

I think that's a violation of the Bagley-Keene Act when the Committee is voting on stuff that was not properly agendized.

So, I would really encourage a no vote, not on the concept itself. I think the concept is good. But I think it should come back at a future meeting. That's not what was on the agenda.

DIVISION CHIEF CASTILLO:

Any email comment?

TROTTER:

No email comment received.

DIVISION CHIEF CASTILLO:

Okay. Any members of the public in Sacramento.

TROTTER:

No in Sacramento.

DIVISION CHIEF CASTILLO:

We've already had comments on this. And to keep the meeting moving, we're going to go take a vote on agenda item 14.

So, could you please, Judge Lucier, the agenda item?

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that the email OAH sends parties, informing parties that there is a document to view include the case number and the title of the document.

DIVISION CHIEF CASTILLO:

For the proposed recommendation for agenda item 14, your vote, Mr. Shaw --
Member Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Member Padron?

MR. PADRON:

No.

DIVISION CHIEF CASTILLO:

No.

DIVISION CHIEF CASTILLO:

No, and I have a yes for Member McCoy. Member Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Yes.

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Member Adams?

MS. ADAMS:

Yes.

DIVISION CHIEF CASTILLO:

Yes from Member Adams. Member Singh?

MS. SINGH:

Yes.

DIVISION CHIEF CASTILLO:

Yes from Member Singh. Member O'Malley?

MS. O'MALLEY:

Yes.

DIVISION CHIEF CASTILLO:

I didn't hear you, Ms. O'Malley.

MS. O'MALLEY:

Yes.

DIVISION CHIEF CASTILLO:

Yes from Member O'Malley. Member Palmer?

MR. PALMER:

No.

DIVISION CHIEF CASTILLO:

No from Member Palmer. Member Kamm?

MS. KAMM:

No.

DIVISION CHIEF CASTILLO:

No from Member Kamm. Member Mendez? Member Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Yes. This passes with four yes votes and one no vote in Northern California. And then in Southern California with four yes votes and two no votes. So, the proposed will be a recommendation from both Committees for OAH to consider.

15, the agenda item is in a due process decision, does the ALJ need to provide or describe all the persons attending the hearing on behalf of the students so that parents are able to have proper data on particular topics when researching the decisions?

This is from a member Padron. If you'd like to speak on it first, Mr. Padron?

MR. PADRON:

Yes. Historically, I've been doing this for a while and historically, the last seven due process decisions that I've advised parents on, there's been a mention that parents have what OAH calls a lay advocate.

Because if everyone remembers, that in 2017, the rules changed that lay advocates could not speak at due process hearings. So therefore, it only allows lay advocates to advise parents.

And recently in a decision, I was present advising parents. I was asked to give my name. And I was asked to spell out my name so that I could be recognized.

And in the decision, the ALJ just decided to not mention that parent was being advised by any advocate or anyone.

So, in my view, OAH has made great attempts to try to have parents, and today we've discussed a lot about student and parent representation, and in particular, parents being non-represented.

And OAH has had the spirit of providing the website to have, in the decisions, to be able to utilize it similarly as a Google Scholar or a Google search.

So, you could search any topic or you could search any person, any attorney, law group or the attorney in itself. But usually all of them that I've researched, the precedence shows that.

It's always described who is there, even if they're assisting parents, sitting next to them or advising them and having those people announce who they are.

This decision violates that. Parent actually asked for the decision to be modified. And the same judge responded by saying that her decision was -- ultimately there was no other recourse but to take it to the District Court.

I think that's wrong, because OAH needs to advise Judges that there's parent groups, parents, and attorneys also utilize this process of trying to find out who is, and recently been involved by utilizing the Z to A, who's been involved recently in any particular matter.

In our situation, it was IEE requests. A lot of people want to know, what is the process for IEE requests? And if you type it in and 0 to A, this case will come out, recent case.

So, I think my recommendation is more that instead of saying in a due process decision, is that my recommendation is that the ALG -- ALJ provide a description of the person's attending. So, I would just add that portion at the beginning.

Because parents do have the right to find out how can we know more about the situation that I'm confronting with my child with the special needs at a school district.

So, that is -- my recommendation is to have the ALJ, and because there's precedence already, to have the ALJ announce who's there on behalf of parent, even if it's not an attorney?

DIVISION CHIEF CASTILLO:

So, Mr. Padron, would your recommendation be that if a parent is represented in an administrative hearing, not represented, is being advised --

MR. PADRON:

Right.

DIVISION CHIEF CASTILLO:

-- by a lay advocate in an administrative hearing, that the decision reflects that?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Member O'Malley? Oh, no, okay. Member Kamm?

MS. KAMM:

Yes, I would like to echo the problem with that 2017 decision by the Attorney General. Which I think has been misconstrued by OAH.

OAH, even in multiple documents of the mediation only forms, specifically told parents that they could not deal with an advocate. And there's nothing in the law that says that, especially with mediation only.

I know that this recommendation specifically is for due process hearings. And I agree that OAH needs to be transparent.

And if there are members of -- if there are people there helping to advise, and they have special knowledge of the of the students, that they should be named.

So, I would agree with -- I would agree with this recommendation.

DIVISION CHIEF CASTILLO:

Any other comments on this, number 15. Oh, Ms. O'Malley?

MS. O'MALLEY:

Just in the interest of time, I hope we take a vote. Because we need to get to a couple other important issues today.

DIVISION CHIEF CASTILLO:

Mr. Shaw?

MR. SHAW:

I haven't fully thought this through. And I have my own thoughts on the 2017 State Attorney General letter, particularly as it relates to something we're not here for, but regional center hearings, et cetera.

But my concern would be setting up non-attorneys in orders for possibly being prosecuted for the unauthorized practice of law.

And I don't know if that makes a lot of sense.

DIVISION CHIEF CASTILLO:

I think what Mr. Padron was asking is, the decision would just say what's permitted under the Education Code for parents to be advised.

Seeing no more comments from the Committee. From the public. If you can please invite in Education Not Litigation.

MS. TROTTER:

Education Not Litigation, you have three minutes to speak.

EDUCATION NOT LITIGATION:

Thank you. And thank you, Senor Padron, for raising this issue. And I think your comments on the decision surge are really on point.

And as a matter of fact, when Eric Menyuk was on this Committee from the Law Firm of Valerie Vanaman, he raised issues about the way the search engine worked.

And at the time, OAH said that they were only putting 2000 decisions on the website. So the decision search is not even complete.

There's other search engines and other law firms that post the decisions. Because OAH is not posting all of the decisions. It is very non-transparent.

And yeah, if people attended the hearing advising or assisting parents, why shouldn't that be reflected in the record? And it's basically censorship.

An OAH Judge decided, in that particular case, that that information should be suppressed. And Mr. Padron's experience illustrates a point that when a parent has a problem with an ALJ, they have no recourse. They're told to go to court.

Well, for an unrepresented parent who has a lay advocate, that's not really a viable option in many cases.

So, I would encourage all parents that are listening to file complaints against the ALJs.

They work for the Department of General Services. They're state employees. So, file complaints with the Department of General Services whenever we're seeing these biased and anti-parent judgment calls, where judges are basically making it up as they go along.

So, yeah, I mean, this item should be supported.

DIVISION CHIEF CASTILLO:

Any email comments?

MS. TROTTER:

No email comments for this agenda item.

DIVISION CHIEF CASTILLO:

Any public comments from member public attending in Sacramento?

MS. TROTTER:

None in Sacramento.

DIVISION CHIEF CASTILLO:

Okay. Judge Lucier, can you please read the recommendation? And I want to see if this is correct Mr. Padron. So, I'll come to you in a second. If you could please read it, Judge Lucier?

ADMINISTRATIVE LAW JUDGE LUCIER:

It is recommended that if a parent is being advised by a lay advocate in an administrative hearing that the decision reflect that.

DIVISION CHIEF CASTILLO:

Is that -- would that be your proposed recommendation, Mr. Padron?

MR. PADRON:

Yes.

DIVISION CHIEF CASTILLO:

Okay. Is there a second on this proposed recommendation? Ms. Kamm?

MS. KAMM:

Yes, I second it.

DIVISION CHIEF CASTILLO:

A second from Member Kamm. Any further discussion from the Committee?
From the public?

MS. TROTTER:

None from the public.

DIVISION CHIEF CASTILLO:

Okay. We'll take a vote on the proposed recommendation for agenda item 15.
Member Shaw?

MR. SHAW:

Yes.

DIVISION CHIEF CASTILLO:

Yes, for Member Shaw. Member McCoy?

MS. MCCOY:

Yes.

DIVISION CHIEF CASTILLO:

Yes, for Member McCoy. Member Padron? You're on mute, Mr. Padron. You're still on mute, Member Padron. Can somebody send a mute request for him? We'll get back to Member Padron. Member Molina?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Yes or no?

MR. MOLINA:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Adams?

MS. ADAMS:

No.

DIVISION CHIEF CASTILLO:

No. Member Singh?

MS. SINGH:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member O'Malley?

MS. O'MALLEY:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Palmer?

MR. PALMER:

Yes.

DIVISION CHIEF CASTILLO:

Yes, from Member Palmer. Member Kamm?

MS. KAMM:

Yes.

DIVISION CHIEF CASTILLO:

Member Mendez?

MS. ASHLEY-MENDEZ:

Yes.

DIVISION CHIEF CASTILLO:

Yes. Member Sherrill?

MR. SHERRILL:

Yes.

DIVISION CHIEF CASTILLO:

Let me try again, Member Padron? Did we lose him? I think we have lost him. But in any event, I'll just put him down as present. So, we have sufficient votes, three yes votes and one no vote in Northern California. Six yes votes in Southern California.

So this proposed recommendation has passed. We have reached the time of 1:00 p.m. Which is the time allotted for the Advisory Committee.

For the next meeting, the proposed agenda items are due by October 1st. For the agenda items that have not been reached, if the members would like these to be considered, to please put them on the agenda as proposed agenda items for the next meeting.

I promise that they would go on for the October meeting. And they will be first in line for that. And with that it's 12:58. And we've reached the time for the meeting. And we'll now be concluding the meeting.

I'd like to thank everyone for the attendance.

UNIDENTIFIED VOICE:

We have not reached 1:00 p.m. And there's three people with their hands up.

DIVISION CHIEF CASTILLO:

Okay, Ms. O'Malley.

MS. O'MALLEY:

I'd like to ask that the OAH makes a recommendation unilaterally without -- that they must give notice first to the Southern and Northern Committee chairs, that will agree in that if OAH makes a recommendation again, it be at the bottom and not in front of all the recommendations that were made by the Members.

That if the OAH wants to put a unilateral recommendation of their own as they did, which came first, that they go at the bottom and let the recommendations by the Members be considered first.

MR. PALMER:

I agree with that. And I'm very disappointed that that OAH's agenda item was put first. We wasted 40 minutes on that item that was not properly vetted through the Committee.

And then of the five items we talked about today, two of which were from Ms. Adams, who is with FFF, that were prioritized over the Committee Members.

And I had two agenda items that didn't even make the agenda. And the one that I got on the agenda is now not being addressed. And I would ask that we have another meeting before October.

DIVISION CHIEF CASTILLO:

Member Kamm?

MS. KAMM:

Yes, I absolutely agree. I think that this meeting violated the Bagley-Keene Act in multiple ways.

You're also adjourning the meeting before public comments, which is an egregious act of the Bagley-Keene Act. Nobody has been allowed to provide general public comments yet. Only certain agenda items were allowed to have comment.

As I noted at the very beginning, you kind of blew past multiple agenda items without even numerating them and pausing to ask if there were public comments on those agenda items. That alone is against the Bagley-Keene Act.

You are now adjourning the meeting without us finishing the agenda items that were listed on the agenda. And as has been noted, OAH added agenda items. Which was not anywhere in the documentation that I received as a Committee Member as even a possibility for OAH to have its own agenda items.

So, I propose that if you adjourn this meeting now, you will be in violation of the Bagley-Keene Act and that you do need to allow for public comments. We do have several people who commented.

I would also suggest that we do hold another meeting. There is precedent for that, where another meeting was held when -- without waiting until October.

We can hold another meeting, as Mr. Palmer requested within, let's say, to month to finish going over these items and also to go over the items that were unlawfully censored.

So, those are my comments.

DIVISION CHIEF CASTILLO:

Thank you. And OAH will consider those and your request for another meeting.

With that, it is now 1.02 p.m. And Advisory Committee meeting is concluded. The next one is currently scheduled for October 18th at 9.30 a.m. And thank you very much for your participation.

- ADVISORY COMMITTEE MEETING CONCLUDED -

CERTIFICATE OF TRANSCRIPT

I, Sherry L. Mainus, hereby certify that this transcript is a true, complete, and accurate transcription of the recording of the Special Education Advisory Committee meeting that took place on June 21, 2024, Office of Administrative Hearings, via Zoom videoconference. This is the original transcript, and the statements that appear in this transcript were transcribed by me to the best of my ability. Executed under penalty of perjury in Sacramento, California on the 8th day of July, 2024.

Sherry L. Mainus

Transcriber

Northern California Court Reporters