BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PALO ALTO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025041223

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE

SEPTEMBER 29, 2025

On September 29, 2025, Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Emily Hart, Attorney at Law, appeared on behalf of Student. Jenai Howard and Nicole Mirkazemi, Attorneys at Law, appeared on behalf of Palo Alto Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on October 7 through 9, 2025, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take four to six days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the amended complaint and clarified by the parties and the ALJ during the two-hour PHC are set forth below. A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

As discussed during the PHC, some of Student's claims listed in the amended complaint at paragraph 80, and in Student's PHC Statement lacked clarity. Many issues were ambiguous, vague, and convoluted. There was also unnecessary duplication of claims and Student's attorney admitted that there were typographical errors in the list of claims regarding which paragraphs of the amended complaint Student was relying upon, adding further confusion. There was also a lack of specificity in the dates for some claims. The ALJ reminded counsel that many of Student's issues were required to be analyzed using the "snapshot" rule, but it was unclear from the way the claims were stated, the date of the "snapshot" Student was seeking to have the ALJ examine. (See, *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041.) Accordingly, the ALJ reviewed each of the listed issues to obtain the necessary clarification of Student's claims, such that all of Student's claims were accurately reflected in this PHC Order as a hearing issue, to attempt to eliminate the ambiguity, vagueness, redundancy, and lack of clarity. At the PHC, Student also withdrew three claims listed as issues 1.a)ii, 3.a) and 3.c) in his PHC Statement.

During the PHC, there was a lengthy discussion of the claim labeled as issue 2.b)vi in Student's PHC Statement, and which is now labeled Issue 11 below. This claim broadly asserted that District denied Student a FAPE by failing to develop an IEP that was reasonably calculated to enable Student to make progress appropriate in light of his

unique circumstances, which was akin to stating District denied Student a FAPE by denying FAPE. FAPE is defined as an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. 386, 403 [137 S.Ct. 988, 1000].) Student's issue 2.b)vi was not the only issue that had the same defect. Student's claims labeled 2.f)vi, 2.h)iii, and 3.b)iii in Student's PHC statement had the same problem. The ALJ informed Student that this claim was too vague and unclear for the ALJ to understand the legal issue being alleged. There was no indication in Student's listed issue as to which specific components of the IEP Student was challenging, or if all components of the IEP were being challenged. And, the paragraphs referenced in the broadly framed claim did little to clarify this uncertainty. The ALJ asked Student to clarify the issues. Student's counsel objected that she was not required to clarify the issue.

Student's objection is overruled. Generally, before filing a complaint, attorneys are required to have a reasonable belief in the allegations asserted, which necessarily includes a reasonable basis for making the stated claim. (E.g., Code Civ. Pro. § 128.7; Fed. Rules Civ. Proc. 11(b).) At the PHC, the ALJ stated that Student's attorney certainly had something in mind when she included this issue in the amended complaint filed with OAH. The ALJ asked Student to state which parts of the IEP were being challenged. Student's counsel ultimately stated that the parties generally had a disagreement over placement and services, but she could not say with certainty that these were the only areas of disagreement on the IEP because the parties were not yet in hearing, she did not have District's evidence, and because of minimal pleading standards.

The ALJ reminded Student's attorney that the parties were not at the pleading stage, but a week before the start of the hearing and she should certainly have some idea what she intended to prove regarding this issue. Student's attorney admitted that

based on the facts she was aware of at the time of the PHC, placement and services were the only areas of disagreement to the IEP, but Student wanted to reserve the right to add at hearing, any additional claims regarding areas of disagreement with the IEP, "if they come up." Student's attorney asserted she was not required to allege all facts and theories of liability at this stage because of the lack of discovery. She said there could be facts or evidence that she does not yet know about.

Student's arguments are unpersuasive. The OAH Scheduling Orders issued after this case was filed required Student to concisely state each of the issues for hearing in his PHC Statement. Student failed to comply with the Scheduling Orders regarding claim 2.b)vi, as well as the claims labeled 2.f)vi, 2.h)iii, and 3.b)iii in Student's PHC statement. Student did not list in his PHC Statement the components of the IEP being challenged and Student admitted at the PHC that only some components were at issue. Each component should have been a separate sub-issue. IEPs are often 20 or 30 and sometimes 40 pages or longer, and comprised of many different components, each component requiring separate analysis based on the particular law the ALJ is required to apply, if that component is being challenged by a petitioner in a due process case. The components of an IEP include, but are not limited to:

- A statement of the child's present levels of academic achievement and functional performance;
- A statement of annual goals;
- A description of the child's progress toward meeting the annual goals;
- A statement of the special education and related services offered;
- A statement of supplementary aids and services offered;

- A statement of program modifications and supports offered;
- An explanation of the amount of time Student will not participate with nondisabled children in the regular class and in certain activities;
- A statement of individual accommodations;
- If necessary and applicable, a statement of why a student cannot participate in regular assessment and why the particular alternate assessment selected is appropriate; and
- The projected date for beginning the services and modifications, and the anticipated frequency, location and duration of those services and modifications.

(20 U.S.C § 1414(d)(1)(A.) It is impossible for the ALJ to rule on relevancy objections or conduct an orderly and efficient hearing if the ALJ does not understand which parts of the IEP Student is challenging, let alone write the decision after the hearing. Unlike cases filed in state or federal court, OAH must conduct a due process hearing and issue a decision within 45 days of receiving the due process complaint, following the expiration of the 30-day resolution period, if any, unless an extension is granted for good cause. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) In short, deciding the due process dispute quickly is legally mandated, and the ALJ is required, within a very short time frame, to hear the case and write a thoroughly reasoned written decision on all hearing issues. Thus, the ALJ cannot allow a party at hearing to spend time putting on evidence not relevant to the hearing issues, including exploring other possible components of the IEP to attack which were not contemplated at the time the pleading was filed or identified at the PHC. Moreover, unlike as is typical in state and federal court, where the parties file and exchange trial briefs prior to

hearing, the parties in OAH special education cases do not file or exchange hearing briefs explaining their case. The ALJ does not have the benefit of the written administrative record with the transcription of the hearing, nor can the ALJ wait for written closing briefs before taking on the task of writing the written decision, which could take weeks where there are many issues, as in this case, to meet the 45-day statutory deadline. Thus, the ALJ must have a clear understanding of the claim which necessarily includes which components of the IEP are at issue at the outset of the hearing. The ALJ uses the process of the PHC to clarify any issues in the pleading or the parties' PHC statements that are unclear, and if necessary, reframes the issues in the PHC Order based on that discussion, so that they are clear and all parties and the ALJ understand what issues will be determined. This work promotes due process, and an efficient, orderly, and fair hearing.

Student's refusal to readily identify the parts of the IEP being challenged to keep open the possibility of raising new challenges to parts of the IEP not contemplated when the amended complaint was filed, much less at the time of the PHC, was improper. Student is limited to the issues alleged, unless District consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56505, subd. (i).) Student cannot keep secret from the ALJ through a vague and broadly written issue, what parts of the IEP are being challenged, to allow him to belatedly raise new claims discovered at hearing. It is true that there is no discovery permitted in special education cases. However, Student can file a separate case if he discovers, through the evidence exchanged or presented at hearing, additional grounds to challenge other components of the IEP offer. Precisely because there is no discovery in special education cases, students are permitted to split their claims into different cases, even when they arise out of the same transaction or occurrence, or as in this case, even when they involve the same IEP. Unlike federal and state court, parties are not required to bring all claims arising out of the same transaction in the same case.

Thus, Student counsel's objection to identifying at the PHC all components of the IEP being challenged in this case, based on the assertion that she does not yet have District's evidence, or could discover new claims at hearing, is unfounded.

Student's objection to properly identifying Student's claims based on "notice pleading" is equally unconvincing. Under notice pleading in federal court, the complaint must give the opposing party fair notice of what the claim is and the grounds upon which it rests. (*Bell Atlantic v. Twombly* (2007) 550 U.S. 544, 555.) "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." (*Swierkiewicz v. Sorema N.A.* (2002) 534 U.S. 506, 512.) However, there are no procedures for discovery or summary judgment motions in special education cases. Thus, the rationale for permitting notice pleading does not exist in special education matters, making it even more critical that Student at least identify what components of the IEP are being challenged, if not explain the basis for the challenge.

Finally, Student's objection to the ALJ rephrasing issue 2.b)vi is overruled. Student's attorney asked for some rephrasing of that issue in addition to other issues. More particularly, although at one point, Student's attorney objected to the ALJ rephrasing of the claim, she also made clear she wanted the issue rephrased to reflect that Student was challenging the IEP, as opposed to the challenging the IEP team meeting. Student wanted the same clarification for other issues, including claims labeled 2.b)vi, 2.f)vi, 2.h)iii, and 3.b)iii.

Accordingly, the issues have been restated, reorganized and renumbered for clarity as allowed in the holdings in *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858

F.3d 1189, 1196, fn. 2 [dictum].) The issues pertaining to parent participation have been reframed using the appropriate legal standard for such claims as set forth in Title 20 United States Code section 1415(f)(3)(E)(ii)(II) and Education Code section 56505, subdivision (f)(2)(A). In the future, to improve clarity and efficiency, counsel should specify in the stated issue when they are challenging the appropriateness of an IEP, the date of the IEP they are challenging and components of the IEP being challenged as separate sub-issues.

Student's claims labeled as 2.b)vi, 2.f)vi, 2.h)iii, and 3.b)iii in the PHC Statement, have been numbered as Issues 11, 20, 24, and 28 below. After further reviewing the amended complaint and the discussion with the parties, the ALJ attempted to further clarify these issues based on the narrative in the pleading. However, at the PHC Student's counsel stated that Student was challenging all services offered. The parties shall be prepared to further clarify these issues at the outset of the hearing, particularly the types of services challenged and where it is referenced in the narrative of Student's amended complaint. The parties shall also be prepared to discuss what is now labeled as Issue 3, which Student labeled 2.a)iv in the PHC Statement, given that it appears the April 28, 2023 IEP team meeting occurred before the May 2023 addendum was completed. Otherwise, the parties are required to immediately file a written objection if any of the issues listed below do not accurately reflect Student's claims or any claim is missing. Any objections will be addressed on the first day of hearing.

ISSUES

1. Did District deny Student a FAPE by failing to provide Parents with a draft of the April 28, 2023 IEP within a reasonable amount of time ahead of the April 28, 2023 IEP team meeting, thereby significantly impeding the

opportunity of Parents to participate in the decisionmaking process regarding the provision of a FAPE to Student?

2. Did District deny Student a FAPE by failing to refer him for an occupational therapy assessment following the discussion at the April 28, 2023 IEP team meeting?
3. Did District deny Student a FAPE by failing to meaningfully consider the findings and recommendations of the December 2022 neuropsychological and educational evaluation, and the May 2023 addendum to that evaluation, during the April 28, 2023 IEP team meeting?
4. Did District deny Student a FAPE by unilaterally disenrolling Student from District without notice to Parents or Parents' consent, following Parents' July 21, 2023 letter giving notice of their intent to unilaterally place Student and seek reimbursement?
5. Did District deny Student a FAPE by failing to have an IEP offer of special education and related services in place before the start of the 2023-2024 school year?
6. Did District deny Student a FAPE by failing to refer him for an occupational therapy assessment following the September 28 and October 19, 2023 IEP team meetings?
7. Did District deny Student a FAPE in the IEP developed at the IEP team meetings held on September 28 and October 19, 2023, by predetermining his ineligibility for occupational therapy services as of the October 19, 2023 IEP team meeting?
8. Did District deny Student a FAPE by failing to have a District occupational therapy provider knowledgeable about available supports and services present at the October 19, 2023 IEP team meeting, thereby significantly

impeding the opportunity of Parents to participate in the decisionmaking process regarding the provision of a FAPE to Student?

9. Did District deny Student deny a FAPE by failing to make a clear offer in the IEP developed during the IEP team meetings held September 28 and October 19, 2023, thereby significantly impeding the opportunity of Parents to participate in the decisionmaking process regarding the provision of a FAPE to Student, specifically:
    A. The IEP provided to Parents on November 2, 2023?
    B. The revised IEP provided to Parents on January 26, 2024?
10. Did District deny Student a FAPE in the development of the IEP developed during the IEP team meetings held September 28 and October 19, 2023, by failing to meaningfully consider the findings and recommendations of the December 2022 neuropsychological and educational evaluation, and the May 2023 addendum to that evaluation?
11. Did District deny Student deny Student a FAPE in the IEP developed during the IEP team meeting held September 28 and October 19, 2023 IEP provided to Parents on November 2, 2023, and revised on January 26, 2024, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically:
    A. Failing to offer an appropriate model of instruction?
    B. Failing to offer an appropriate amount of integrated evidence-based interventions during the school day?
    C. Failing to offer 2024 extended school year services?
    D. Failing to include an appropriate type and amount of specialized academic instruction?
    E. Failing to offer any appropriate services?

F. Failing to offer an appropriate placement?

12. Did District deny Student a FAPE by preventing Parents from having a comprehensive placement observation in fall 2023, thereby significantly impeding the opportunity of Parents to participate in the decisionmaking process regarding the provision of a FAPE to Student and Parents' right to informed consent?
13. Did District deny Student a FAPE by failing to provide Parents with prior written notice in response to Parent's December 19, 2023 letter giving notice of their intent to unilaterally place Student and seek reimbursement?
14. Did District deny Student a FAPE by misrepresenting that Student was no longer enrolled in the District or entitled to a FAPE in its correspondence to Parents, dated January 11, 2024, thereby significantly impeding the opportunity of Parents to participate in the decisionmaking process regarding the provision of a FAPE to Student?
15. Did District deny Student a FAPE by failing to timely complete Student's three-year reevaluation and hold an IEP team meeting to review it pursuant to Parents' February 2024 consent to the assessment plan?
16. Did District deny Student a FAPE by predetermining Student's offer of placement and services in the IEP developed at the IEP team meetings held April 18 and May 17, 2024?
17. Did District deny Student a FAPE in the IEP developed at the IEP team meetings held April 18 and May 17, 2024, by failing to meaningfully consider the findings and recommendations of the December 2022 neuropsychological and educational evaluation and the May 2023 addendum to that evaluation?

18. Did District deny Student a FAPE in the IEP developed at the IEP team meetings held April 18 and May 17, 2024, by failing to meaningfully consider Parents' concerns?
19. Did District deny Student a FAPE by failing to have a Greene Middle School staff member knowledgeable about available supports and services at the May 17, 2024 IEP team meeting?
20. Did District deny Student a FAPE in the IEP developed at the April 18 and May 17, 2024 IEP team meetings, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by:'
    A. failing to offer occupational therapy services?
    B. failing to offer an appropriate amount of integrated evidence-based interventions during the school day?
    C. failing to offer appropriate specialized academic instruction programming?
    D. failing to offer any appropriate services?
    E. failing to offer an appropriate placement?
21. Did District deny Student a FAPE by preventing Parents from having a comprehensive placement observation in spring 2024, thereby significantly impeding the opportunity of Parents to participate in the decisionmaking process regarding the provision of a FAPE to Student and Parents' right to informed consent?
22. Did District deny Student a FAPE by failing to have at the May 29, 2024 IEP team meeting a sixth-grade teacher knowledgeable about available supports and services at Greene Middle School?

23. Did District deny Student a FAPE in the IEP developed at the IEP team meeting held on May 29, 2024, by failing to meaningfully consider the findings and recommendations of the December 2022 neuropsychological and educational evaluation and the May 2023 addendum to that evaluation?
24. Did District deny Student a FAPE in the IEP developed at the May 29, 2024 IEP team meeting, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by:
    A. failing to offer an appropriate amount of integrated evidence-based interventions during the school day?
    B. failing to offer appropriate specialized academic instruction programming?
    C. failing to offer any appropriate services?
    D. failing to offer an appropriate placement?
25. Did District deny Student a FAPE by unilaterally disenrolling Student from District without notice to Parents or Parents' consent, following Parents' July 30, 2024 notice of their intent to unilaterally place Student and seek reimbursement?
26. Did District deny Student a FAPE in the IEP developed at the IEP team meetings held on April 23 and May 29, 2025, by failing to meaningfully consider the findings and recommendations of the March 20, 2025 neuropsychological and educational evaluation?
27. Did District deny Student a FAPE in the IEP developed at the IEP team meetings held on April 23 and May 29, 2025, by predetermining the offer of placement and services?

28. Did District deny Student a FAPE in the IEP developed at the IEP team meeting held on April 23 and May 29, 2025, by failing to develop an IEP that was reasonably calculated to enable him to make progress appropriate in light of his circumstances, specifically, by:

    A. failing to offer any appropriate services?

    B. failing to offer an appropriate placement?

PROPOSED RESOLUTIONS

The resolutions requested by Student include reimbursement for costs associated with Student's attendance at Charles Armstrong School, including transportation, and reimbursement for costs associated with the December 2022 evaluation and May 2023 addendum, the March 20, 2025 evaluation and the attendance of the evaluator at IEP team meetings. Student also seeks compensatory education for academic remediation services for the 2023-2024, 2024-2025 and 2025-2026 school years.

District filed their response to the amended complaint on July 18, 2025. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. District must use the letter D before the number to identify District's exhibits. For example, S-1 means Student's exhibit 1 and D-1 means District's. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order with the oldest document first.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

District exhibits must include a copy of the school calendar for each school year in question, including but not limited to, the 2025-2026 school year and all extended school years.

For assessment plans, the parties shall include all signatures pages, if any, demonstrating when the assessment plan was sent, and if, and when Parent signed the assessment plan.

For IEPs, the parties shall include all signatures pages, if any, demonstrating who attended each IEP, and if, and when, Parent consented to or refused to consent to each IEP.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. Please refer to the General Order OAH issued with the Scheduling Order that contains the Order Setting Procedures for Filing Exhibits Electronically. It includes instructions for how to file exhibits electronically. Beginning three business days before the hearing, the electronic evidence system will not allow parties to upload exhibits unless permitted by the ALJ during the hearing at the ALJ's discretion.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the Zoom application, may find informative instructions by visiting, Getting Started with Zoom at https://support.zoom.us/hc/en-us/categories/200101697.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need to call witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to present such evidence.

The parties are ordered to meet and confer no later than October 2, 2025, at 5:00 PM to discuss scheduling witnesses and how much time each witness will take to testify. The parties shall discuss any issues related to counsel and witnesses appearing

by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties shall identify duplicate exhibits in the parties' hearing exhibits and decide which one of the duplicates both parties will use at hearing. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, District shall inform Student which proposed witnesses are District employees. District shall also identify the witnesses on Student's list that require a subpoena. District may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information by October 2, 2025, at 5:00 PM, except District shall provide the contact information for the list of witnesses in the next paragraph by September 30, 2025, at 5:00 PM pursuant to their agreement at the PHC. These obligations are reciprocal. To the extent applicable, Student is required to do the same regarding the witnesses on District's list and provide the witness's most recent contact information.

District shall provide the addresses, phone numbers and email addresses for the following former District employees by September 30, 2025, at 5:00 PM: Marisol Briones, Tina Diaz, Angela Hernandez, Simone Worsham, Angelica Plascencia, and Paul Liu.

Any contact information provided to the opposing party shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information provided shall not be disclosed to any other person.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party(s) at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by District, unless otherwise ordered or agreed.

WITNESS SCHEDULE

On the first day of hearing, the parties must provide a joint proposed witness schedule for the entire hearing to the ALJ. The schedule should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony, on an hour-by-hour basis, with breaks in the testimony factored in. In the event an agreement cannot be reached regarding the schedule, each party shall prepare a separate written schedule. Both parties must have witnesses available in case there is no agreement on the schedule.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. The OAH recording is the only official recording;
2. The parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
3. Operation of the party's recording mechanism will not be allowed to delay the hearing;
4. A party's recording may not be given, provided or played to a witness, or potential witness;
5. The recording is subject to the same confidentiality as the due process hearing; and
6. Participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and District's requests to make an audio recording of the hearing is granted, subject to the above conditions and any further orders made at the hearing. The parties are prohibited from using artificial intelligence to either record the hearing or transcribe the recording.

VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

Recordings may not be uploaded electronically without the ALJ's permission. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor and chronologically organized with the oldest document first.

MOTIONS

No prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested an accommodation or interpreter.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings.

HEARING OPEN TO THE PUBLIC

The hearing is open to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case. Further orders will be made at the hearing.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ

conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings