BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2025060187

ORDER DENYING STUDENT'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND DISTRICT EMPLOYEES AND CONTRACTOR PERSONNEL INFORMATION

JUNE 26, 2025

On June 5, 2025, Parent, on behalf of Student, filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Cupertino Union School District as respondent. The complaint was deemed partially expedited and scheduled for both expedited and non-expedited proceedings. Following the expedited prehearing conference, the non-expedited claim was dismissed by the undersigned as outside OAH jurisdiction. The case proceeds on the expedited claims.

In his expedited prehearing conference statement, filed June 20, 2025, Student asserted a request that OAH order Cupertino to produce a variety of information. The prehearing conference statement was filed late, and the motion was not filed separately as required by OAH protocols. However, it was discussed in the prehearing conference. The undersigned decided to exercise her discretion and review Student's requests. Cupertino was given until Tuesday, June 24, 2025 to respond to the requests. Cupertino filed a timely response. On June 26, 2025 Student filed an unsigned reply to District's opposition.

Parent should not assume that OAH will always exercise discretion to review documents that are filed late, without explanation. Student is expected to comply with applicable deadlines for Student filed documents regardless of Parent's choice to proceed without an attorney. Student is also advised that unsigned documents will not be considered in the future. In this case, Student's reply was reviewed and considered in deciding this motion. Parent is referred to the information available to Parents about the hearing process on OAH's website, available here: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Self-Help.

PARENT'S INFORMATION REQUESTS

Parent requests the following documents in his prehearing conference statement:

1. All emails, chats, messages, and any correspondences exchanged between Debbie Bongiovanni, identified as Student's classroom teacher; Christine Beaupre, identified as an Instructional assistant; and Debbie_CCS@mcauliffek8.com identified as classroom 2's coordinators Tamira Ford and Sangheeta Vijaya.

2. Classroom attendance information for Deborah Bongiovanni and Christine Norris;
3. Full names and addresses of all substitute teachers, visiting teachers, interns, temporary teachers "who served or attended Classroom 2TK through the 2024-2025 school year, or served during the Extended Learning Opportunity Program.
4. Last known contact details for Ranferis Martinez and Jennifer Virrueta, who Student asserts worked for the Extended Learning Opportunities Program through the YMCA, as well as any contracts Cupertino had with either of them.
5. Complete 2024-2025 school year Extended Learning Opportunities Program attendance records regarding Student.
6. Witness history information regarding the 65 potential witnesses Student identifies in his PHC statement, including their full names current home and work addresses; email addresses; phone numbers; resumes; any other names they've used and the dates the names were used; detailed professional histories since high school graduation; all professional licenses with dates obtained; details of employment with Cupertino Union School District; copies of their complete "personnel/Human Resources/employment records" with Cupertino including all disciplinary actions; and copies of all contracts with Cupertino.

DOCUMENT PRODUCTION AND NARRATIVE INFORMATION REQUESTS

There is no right to general pre-hearing discovery in special education administrative proceedings. California Education Code § 56504 provides that "[t]he parent shall have the right and opportunity to examine all school records of his or her

child and to receive copies pursuant to this section and to Section 49065 within five business days after the request is made by the parent, either orally or in writing." (Ed. Code § 56504)

An "education record" under IDEA is defined by the regulations implementing the Family Educational Rights and Privacy Act ("FERPA"). 34 C.F.R. § 300.611(b). Under FERPA, an education record includes records, files, and documents that contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." (20 U.S.C. § 1232g(a)(4)(A); *Burnett v. San Mateo Foster City School District* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The Supreme Court has interpreted the word "maintained" in FERPA as "to keep in existence or continuance; preserve; retain" and reasoned that "the word 'maintain' suggests FERPA records will be kept in a filing cabinet in a records room at the school or on a permanent secure database." (*Burnett,* citing, *Owasso Indep. Sch. Dist. No I-011 v. Falvo,* (2002) 534 U.S. 426, 432-33, 122 S.Ct. 934, 151 L.Ed.2d 896.) Student has not asserted that he made a request for educational records that Cupertino denied.

A party to a due process hearing under the Individuals with Disabilities in Education Act has the right to present evidence and compel the attendance of witnesses in "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h); see also Ed. Code, § 56505, subd. (e).) Student is also entitled to receive copies of any documents that Cupertino intends to present at the due process hearing at least five days prior to the hearing. (Ed. Code § 56505, subd. (e)(7).)

Student has failed to offer any legal authority mandating that Cupertino make any disclosures, or confirmations, of contact information or personnel information

pertaining to employees or District contractors. It appears the information sought referencing YMCA employees at the Extended Learning Opportunities Program indicates the two people worked for Cupertino through a contract with the YMCA, as opposed to being direct employees of Cupertino.

Furthermore, while Student has the right to seek a subpoena of information to be produced on the first day of hearing, Student has not asserted that any of the information listed was sought pursuant to subpoena. Any requested subpoena must meet the requirements for subpoenaing documents in a special education hearing, including a fact based declaration stating the requested information meets the standards of "reasonable necessity" to prove his case. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2); *Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.)

Student's PHC statement asks that the identified requests for documents, and the narrative responses to 10 questions. regarding each of the 65 witnesses. Student may call at the expedited hearing, be provided to him "at the "earliest convenience" to allow his preparation for hearing. This is clearly a request for pre-hearing discovery that is not allowed in a special education procedure.

Student's requests for documents, and narrative responses to questions regarding employees and contractors, is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings