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 2024070468

ORDER DENYING MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND CONTACT INFORMATION FOR DISTRICT EMPLOYEES

NOVEMBER 12, 2024

On July 12, 2024, Student filed a request for due process hearing, also called a complaint, with the Office of Administrative Hearings, called OAH, naming Palo Alto School District as respondent. On October 9, 2024, OAH granted Student's request to amend the complaint. OAH issued a new scheduling order setting the hearing for November 26 and 27, 2024. The parties' prehearing conference is set for November 15,2024.

On November 5, 2024, Student filed a motion to compel Palo Alto to "produce documents, produce district witnesses for hearing, and to produce contact information

for all witnesses no longer employed or contracted with through *[sic]* the district." On November 8, 2024, Palo Alto filed an opposition to Student's motion.

DOCUMENT PRODUCTION REQUESTS

Student seeks an order compelling Palo Alto to confirm all educational records have been produced. However, Student fails to offer any legal authority requiring Palo Alto to offer such confirmation. Student states that it requested records from Palo Alto twice: once on February 5, 2024, and on October 30, 2024. It is implied, but not stated, that some records were produced.

As Student acknowledges, there is no procedure for general discovery at the administrative level for special education due process cases. Student seeks confirmation from Palo Alto that it will not offer any documents as proposed exhibits at hearing that were not previously disclosed. However, Student offers no legal authority that he is entitled to such a representation at this stage of the proceedings.

Student is entitled to receive copies of any documents that Palo Alto 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 support mandating that Palo Alto make any disclosures or confirmations of documents prior to that date.

Student also asks that OAH compel the production of consultation logs pertaining to augmentative and alternative communications, services logs pertaining to occupational therapy and mobility services; and speech services for the past four years. Student also seeks an order compelling the production of "behavior logs" and "ELD" logs for the past four years. Additionally, Student seeks an order compelling the production of emails and an IEP document from February 13, 2024, including docu-sign records regarding the IEP document as well as "protocols and testing materials or work

samples that the district has which show progress on her English language skills." However, Student offers no legal authority for such an order, or even confirmation that such records exist. Student's motion to compel these documents is denied. Student's request that Palo Alto be required to confirm that all educational records have been produced is also denied.

DISTRICT WITNESS CONTACT INFORMATION

Student next requests that OAH require Palo Alto to "produce contact information for its employees, in light of Palo Alto's refusal to require employees to testify who do not agree to do so." Student offers no legal authority mandating Palo Alto to share private employee contact information.

Student asserts, again, without legal authority, that school district are, "typically obligated to produce their employees to testify." Student goes on to analogize this to the obligation to produce a "person most knowledgeable" in the civil law context. However, the two concepts are quite different. Student goes on to acknowledge that she has the right to subpoena witnesses. However, to do so, Student, "requests an Order instructing the District to make these witness' last known mailing address available so that subpoenas can be served prior to the Prehearing Conference Statement's due date of November 12, 2023." Student offers no legal authority requiring Palo Alto to assist her in subpoenaing witnesses against it. Nor does Student offer legal authority requiring Palo Alto to disclose the personal home addresses or other contact details of its current or former employees or contractors.

Student also fails to offer any legal authority requiring Palo Alto to facilitate her disclosure of witnesses prior to the deadline, which is five days prior to the hearing as mandated by statute. (Ed. Code § 56505, subd. (e)(7).) Instead, Student references the

OAH scheduling order requiring Student to provide "A list of subpoenas for witnesses for testimony, or documents that have been issued or served" as the basis for her need for this order. The scheduling order, however, simply asks for a list of subpoenaed witnesses and documents issued to date. This does not alter the deadline for disclosures of witnesses and evidence prior to the hearing.

Student offers a vague reference to the case of *Trammel v. United States* (1980) 445 U.S. 40, in support of her requests. Specifically, Student asserts the case mandates, "Indeed, the United States Supreme Court has confirmed that a fundamental principle of the common law is that "the public . . . has a right to every man's evidence." Inappropriately, Student cited a piece of one sentence of the case, taken out of context, and used that to argue a general right in this administrative process.

Trammel v. United States is a criminal case, involving drug dealing charges, that focused on an analysis of the owner of the spousal privilege. The accused objected to his wife being offered immunity to testify against him. The full quotation is, "Testimonial exclusionary rules and privileges contravene the fundamental principle that 'the public . . . has a right to every man's evidence.' " [citation omitted.] The Supreme Court went on to say, "Here we must decide whether the privilege against adverse spousal testimony promotes sufficiently important interests to outweigh the need for probative evidence in the administration of criminal justice." Neither the cited text nor the case in general supports Student's requested orders in the matter before OAH.

Student's request that OAH order Palo Alto to disclose private, personnel information is denied.

DISTRICT WITNESS PRODUCTION FOR HEARING

Student's final request is that Palo Alto be "ordered to make all witnesses available on November 26, 2024." Student asserts, that Palo Alto is not entitled to state it will only make witnesses available on a voluntary basis on November 26 and 27, 2024 due to Palo Alto's scheduled school holiday.

Student's attached correspondence regarding witnesses indicates an intent to call 30 witnesses, as of October 30, 2024. Palo Alto's counsel agreed to accept service of subpoenas for Palo Alto employees in exchange for an agreement that Student would limit the witnesses called on the Tuesday and Wednesday before Thanksgiving to "those who are available (i.e. no traveling for vacation/family) and willing to testify on 11/26 or 11/27." In its opposition to Student's motion to compel, counsel declined to accept service of subpoenas of witnesses who were on break. However, he would accept subpoenas of all district employee witnesses for the following week.

Palo Alto does not have the right to limit Student's ability to call witnesses on the first two days of hearing, even if the district is on a holiday break. The fact that Palo Alto has a scheduled school holiday when OAH has scheduled a hearing does not automatically constitute lack of availability. That said, if a witness is legitimately unavailable and evidence of that is provided, such unavailability could constitute a basis to excuse the witness from testifying on the days Student first chooses.

Student is planning to call far more witnesses than will be able to be heard on the first two days of hearing. Palo Alto states in its opposition that nine current Palo Alto employees are willing to attend the hearing and testify on November 26 and 27, 2024. Palo Alto counsel has stated he will accept service for those employees. Student remains at liberty to serve subpoenas directly on other witnesses she wishes to call, if

the witnesses who are volunteering do not meet Student's needs on November 26 and 27, 2024.

OAH expects parties to cooperate in creating a witness schedule. While cooperation from both sides to produce witnesses is expected, ultimately, it is the responsibility of the party calling the witness to get them on the stand. Student is not entitled to an order requiring all 30 witnesses she has identified as witnesses who may be called during the hearing, to be available on November 26 and 27, 2024. If a particular witness is at issue and the need for that person to testify in a particular order or on a particular date can be established, either party may make any necessary motion.

ORDER

1. Student's motion to compel documents is denied.
2. Student's motion to compel the disclosure of current employee contact information is denied.
3. Student's motion to compel the disclosure of former employees or contractors contact information is denied.
4. Student's motion to compel Palo Alto to have all witnesses identified by Student available to testify on the first two days of hearing, November 26 and 27, 2024, is denied.

IT IS SO ORDERED.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge, Office of Administrative Hearings