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 FOR DELAYED PRODUCTION OF SUBPOENAED DOCUMENTS

DECEMBER 16, 2024

On July 12, 2024, Student filed a request for due process hearing naming Palo Alto Unified School District, called Palo Alto. The due process hearing in this matter began on November 26, 2024, and is ongoing.

On November 12, 2024, Student served a subpoena duces tecum on Palo Alto, seeking 15 categories of documents from the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years. On November 15, 2024, Student withdrew categories 1, 2, 14, and 15 of the subpoena duces tecum. On November 22, 2024, OAH granted in part Palo Alto's motion to quash the subpoena, quashing categories 7 through 11. On December 13, 2024, Student withdrew issues involving alleged failure of Palo Alto to

draft goals, offer services, or implement goals or services in the areas of motor, behavior, and toileting, for all years at issue.

Category 6 seeks all emails sent to Palo Alto employees referencing Student by name or identification number during the 2021-2022, 2022-2023, 2023-2024, and 2024-2025 school years. On December 11, 2024, Palo Alto filed a motion for extension of time to produce documents, supported by the sworn declaration of its Director of Special Education, explaining that an email search had produced 9,809 files, containing 143,084 pages. Counsel for Palo Alto estimated it would take 55 to 90 hours to review the pages for responsiveness, redact personally identifiable information about other students, and review for privilege with an accompanying privilege log. Palo Alto anticipated that it would be able to comply with the subpoena duces tecum by December 27, 2024.

On December 12, 2024, Student filed a response to Palo Alto's motion requesting a deadline for delayed production, and that Palo Alto be required to provide complying pages after redaction and privilege review, with an updated privilege log, on a daily basis. Student further requested that Palo Alto employees previously served with a subpoena duces tecum who provided little or no response, including Christina Dias, Nhat Hoang, Mena Khoury, Josh Shleffar, Cynthia Loleng-Perez, Rebecca Shen-Lorenson, and Jerry Berkson, be ordered meet with Palo Alto's attorney and produce:

- Redacted calendars showing all entries for Student,
- All emails and texts that reference Student,
- All educational records that have not yet been produced.

Palo Alto's response is reasonably delayed due to the extreme volume of documents subpoenaed and the necessity of reviewing and redacting each potentially responsive page. Palo Alto is ordered to produce to Student all responsive documents not withheld due to privilege by December 27, 2024. Documents redacted and reviewed for privilege and not withheld must be produced to Student on a daily basis. In order to avoid delay in review, redaction, and production of documents between the date of this order and December 27, 2024, Palo Alto is not required to provide a daily privilege log. However, a privilege log of any documents withheld or redacted because Palo Alto is asserting a privilege as to that document or a portion of that document must be produced to Student no later than December 27, 2024.

To minimize prejudice to Student from the delayed production, the undersigned Administrative Law Judge, on the record in the due process hearing, will discuss with the parties scheduling a hearing day in January 2025 for Student to call witnesses to inquire about the late-produced documents. If Student wishes to call or recall a witness, written offers of proof concerning the documents, testimony, and estimated time for questions for each witness will be required.

In special education proceedings in California, an Administrative Law Judge may require production of documents in a person's possession or under their control pursuant to a subpoena duces tecum on a showing of reasonable necessity. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) A showing of reasonable necessity for a subpoena duces tecum in due process hearings is similar to the good cause showing required for subpoenas duces tecum in civil cases, that is, the documents sought to be produced must be material and relevant to the litigated issues. (See Code Civ. Proc., § 1985, subd. (b); *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.)

The requested categories of documents contained in the individual subpoenas are material and relevant to the extent they concern assessment, goals, and services proposed or provided to Student in the remaining areas at issue, specifically:

- English language development,
- Speech and augmentative and alternative communication,
- Functional academics, and
- Transition.

Student's attendance is also material and relevant to the issues in this due process proceeding.

Accordingly, Palo Alto's attorney will meet with Christina Dias, Nhat Hoang, Mena Khoury, Josh Shleffar, Cynthia Loleng-Perez, Rebecca Shen-Lorenson, and Jerry Berkson and obtain copies for Student of the following documents in each individual's possession or under that individual's control, dated or created from the beginning of the 2021-2022 school year through October 9, 2024:

1. Calendars with entries referencing Student's attendance, assessment, goals, or services as to English language development, speech and augmentative and alternative communication, functional academics, or transition, or discussion of any of these areas with Palo Alto administration or staff. Personally identifiable information of other students must be redacted, and calendar pages without the ordered information need not be produced.

2. Emails and texts referencing Student's attendance, assessment, goals, or services as to English language development, speech and augmentative and

alternative communication, functional academics, or transition, or discussion of any of these areas with Palo Alto administration or staff. Personally identifiable information of other students must be redacted.

3. Educational records that have not already been produced referencing Student's attendance, assessment, goals, or services as to English language development, speech and augmentative and alternative communication, functional academics, or transition, or discussion of any of these areas with Palo Alto administration or staff. Personally identifiable information of other students must be redacted.

IT IS SO ORDERED.

Alexa Hohensee

Alexa Hohensee
Administrative Law Judge
Office of Administrative Hearings