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 2025030847

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE

AUGUST 1, 2025

On August 1, 2025, Administrative Law Judge Chris Butchko, 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.

Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Nicole Mirkazemi, Attorney 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 Tuesday, August 12, 2025, through Thursday, August 14, 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 more than one week to complete the hearing. If necessary, 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 a 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 clarified by the ALJ with input from the parties, remain as stated in Judge Cruz' Prehearing Conference Order of May 8, 2025:

ISSUES

A free appropriate public education is called a FAPE. An individualized education program is called an IEP.

1. Did Palo Alto Unified deny Student a FAPE by failing to timely provide Parents a complete copy of his educational records pursuant to Parent's records requests on:
   a. August 15, 2023; and
   b. October 28, 2024?
2. Did Palo Alto Unified deny Student a FAPE from March 20, 2023, through August 14, 2023, by failing to timely assess Student in:
   a. psychoeducation;
   b. behavior;
   c. occupational therapy;
   d. speech and language; and
   e. mental health?
3. Did Palo Alto Unified deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to conduct a comprehensive post-secondary transition assessment of Student?

4. Did Palo Alto Unified deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to convene timely IEP team meetings within 30 days of Parents requests?
5. Did Palo Alto Unified deny Student a FAPE by failing to convene a timely IEP meeting by August 2023 to review assessments?
6. Did Palo Alto Unified deny Student a FAPE during the 2023-2024 school year by:

   a. failing to offer goals that appropriately addressed Student's needs in math, writing, organization skills, transition to independent living, communication, counseling, mental health, and post-secondary transition; and

   b. failing to offer any goals in social skills, fine motor skills, sensor processing, and executive functioning?
7. Did Palo Alto Unified deny Student a FAPE during the 2024-2025 school year, through March 20, 2025, by:

   a. failing to offer goals that appropriately addressed Student's needs in math, writing, organization skills, transition to independent living, communication, counseling, mental health, and post-secondary transition; and

   b. failing to offer any goals to address Student's needs in social skills, fine motor skills, sensor processing, and executive functioning?
8. Did Palo Alto Unified deny Student a FAPE by failing to timely request a due process hearing when Parents did not provide full consent to the IEPs dated August 24, 2023, September 5 and 12, 2023, and May 21, 2024?
9. Did Palo Alto Unified deny Student a FAPE from October 10, 2023, through March 20, 2025, by delaying and preventing Parents from obtaining a timely independent educational evaluation because Palo Alto Unified imposed an unreasonably restrictive criteria for the independent educational evaluation?

10. Did Palo Alto Unified deny Student a FAPE by failing to offer an appropriate transition plan:
    a. from March 21, 2023, through the 2022-2023 school year;
    b. during the 2023-2024 school year; and
    c. during the 2024-2025 school year, through March 21, 2025?
11. Did Palo Alto Unified deny Student a FAPE by predetermining his IEPs from March 20, 2023, through March 20, 2025?
12. Did Palo Alto Unified deny Student a FAPE during the 2023-2024 school year by failing to offer:
    a. appropriate services for post-secondary transition, transition to a school campus, behavior, academics, speech and language, mental health, social skills, and occupational therapy; and
    b. an appropriate placement?
13. Did Palo Alto Unified deny Student a FAPE during the 2024-2025 school year, through March 20, 2025, by failing to offer:
    a. appropriate services for post-secondary transition, transition to a school campus, behavior, academics, speech and language, mental health, social skills, and occupational therapy; and
    b. an appropriate placement?
14. Did Palo Alto Unified deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to assess him for a specific learning disability?
15. Did Palo Alto Unified deny Student a FAPE from March 20, 2023, through March 20, 2025, by failing to find him eligible for special education services because of a specific learning disability?
16. Did Palo Alto Unified deny Student a FAPE by failing to make a clear written offer of specialized academic instruction in the:

a. August 14, 2023 IEP; and

b. May 14, 2024 IEP?

Palo Alto filed a response to Student's complaint on March 11, 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. Palo Alto must use the letter D before the number to identify its exhibits. For example, S-1 means Student's exhibit 1, and D-1 means Palo Alto's exhibit 1. 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; 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 or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

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

Palo Alto's exhibits must include a copy of the school calendar for each school year in question.

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 online 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 for calling 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 hear.

The parties are ordered to meet and confer no later than 5:00 PM on Wednesday, August 6, 2025, to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. 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, Palo Alto shall inform Student which proposed witnesses are its employees. Palo Alto shall also identify any witnesses on Student's list that require a subpoena. Palo Alto has agreed to accept service for witnesses under its control or provide Student with the witness's most recent contact information.

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 at least five business days prior to hearing.

Following the PHC, the parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions no later than 5:00 PM at least two business days before the first day of hearing.

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

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.) Student, as the filing party, bears the burden of proof for all elements of his issues. Student's case-in-chief shall be presented first, followed by Palo Alto, unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list 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. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement.

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. No party proposes at this time to present witnesses telephonically.

ELECTRONIC RECORDINGS

AUDIO RECORDING

Palo Alto requested 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:

- the OAH recording is the only official recording;
- 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;

- operation of the party's recording mechanism will not be allowed to delay the hearing;
- a party's recording may not be given, provided, or played to a witness, or potential witness;
- the recording is subject to the same confidentiality as the due process hearing; and
- participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.
- Both parties are granted permission to audio-record the hearing on these terms.

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 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.

No party proposes at this time to enter recordings into evidence.

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.

MOTIONS

On July 24, 2025, Student filed a motion to quash a subpoena directed to Hope Technology School, a non-public school that is student's current placement. Student moved on the grounds that the subpoena was unduly burdensome, unnecessary, overbroad, and infringing upon the educational rights of other students. Palo Alto opposed the motion on July 28, 2025, arguing that such subpoenas are routine, that the documents are necessary to prepare for hearing, and that the request is reasonable and limited in time and scope. Student filed a reply to the opposition on July 30, 2025, noting that Student had given a release of information to Palo Alto to obtain Student's educational records from Hope Technology School and arguing that Palo Alto should not be allowed to use subpoenaed documents to augment its defense at hearing.

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).)

In special education proceedings in California, "[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party)." (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) This requirement mirrors that required by Code of Civil Procedure section 1985, subdivision (b), which requires:

> A copy of an affidavit shall be served with a subpoena duces tecum . . ., showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*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.)

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, Office of Administrative Hearings, referred to as OAH relies by analogy on the relevant portions of the Code of Civil Procedure. Code of Civil Procedure section 1987.1 provides that a court may make an order quashing a subpoena entirely, modifying it, or directing compliance with it upon such terms or conditions as the court shall declare, including protective orders.

Palo Alto's subpoena is necessary. As described in the subpoena itself and as supported by the opposition to the motion to quash, the requested documents are relevant and material to the issues of Student placement needs and Student's claim for reimbursement. The request comprises more than the educational records Palo alto can obtain through a release of information.

Student has not demonstrated how the request is unduly burdensome on Hope Technology School, and the school may seek relief from the subpoena if necessary. Similarly, Student's claim that the subpoena is overbroad is based upon a hypothetical overcompliance with the subpoena that is highly unlikely: contrary to Student's assertion in his reply, Palo Alto's request for communications regarding Student does not rationally encompass the school's lunch menus.

Student's argument that other students' private information may be included in the school's response is meritorious. Specifically, Student is concerned that his brother, who attends the same school, may also be discussed in these communications. Accordingly, to protect the right to educational privacy held by Student's brother, and any other students who may be mentioned in these records, Palo Alto is directed to inform the Hope Technology School that it should redact any mention of other Students in the materials provided in response the subpoena. A copy of that directive shall be provided to Student's counsel, and the parties should discuss any remaining issues regarding the Subpoena duces tecum at the August 6, 2025 meet and confer session. If judicial intervention is required, a motion must be filed by Friday, August 8, 2025. The motion need not include a declaration of good cause for filing after the motion cut-off.

No other prehearing motions are pending. 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

No interpretation services are required, and neither party requested any other accommodations.

A party or participant, such as a witness, in this case requiring reasonable accommodation to participate in the 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 CLOSED 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. Student explicitly retained the right to open the hearing 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.

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.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings