BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2026010552

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE AND DENYING STUDENT'S MOTION TO FUND WITNESS FEES

MAY 15, 2026

On May 15, 2026, 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.

Roberta Savage, Attorney at Law, appeared on behalf of Student. David Mishook, Attorney at Law, appeared on behalf of Mt. Diablo 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 May 27 and 28, 2026, 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 eight to ten days to complete the hearing.

Student's counsel requested that the hearing not take place on June 4, 2026, through and including June 9, 2026, because she is scheduled to be out of state to attend a family wedding. That request was granted at the PHC. Additional hearing dates after June 9, 2026, 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 complaint and clarified by the parties and the ALJ during almost two-hour PHC are set forth below.

Student's PHC statement failed to separately and concisely state each issue Student seeks to have the ALJ decide, as required by Scheduling Orders. The issues listed for hearing combined multiple issues, multiple IEPs over multiple school years, and were not specific enough for the ALJ to understand Student's claims, or for the ALJ to apply the snapshot rule. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 439; *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[whether a student was denied a FAPE by an inadequate IEP offer is determined by looking to what was reasonable at the time, not in hindsight].)

At the outset of the discussion regarding the Issues, Student withdrew the claims in the amended complaint labeled as Issue I and Issue IIJ. Those claims are not included as issues for hearing, and the issues have been renumbered for clarity. During the lengthy PHC, Student also withdrew parts of other claims or admitted that some of the claims were duplicative of another claim or claims and that there were typographical errors in the listed issues. The reorganization and reformulation of the issues below reflect that discussion.

Despite the ALJ's attempt to have Student clarify all hearing issues, Student's counsel was unable to do so at the PHC and sought permission to clarify them after the PHC. Student was uncertain as to the dates of the written IEP offers, including whether a written IEP offer was ever generated at the February 10, 2026 IEP team meeting.

Student also stated that she might withdraw, narrow or further clarify the issues before the hearing, including perhaps withdrawing the claim labeled in the amended complaint as "II.N." District objected to Student waiting until the first day of hearing to clarify her issues and requested permission to object in writing in the event any issue is not set forth in the amended complaint. The ALJ ordered that Student promptly provide clarification of the issues so that District and the ALJ understand all the claims for hearing and granted District's request to make its objections in writing.

Given the parties' estimated length of the hearing, the ALJ does not want hearing time spent on matters which are not at issue in this hearing. Accordingly, for all issues Student intends to have OAH adjudicate at hearing, Student shall clarify the issues for hearing in writing no later than May 21, 2026, at noon by providing the additional information set forth below.

- For all issues where Student is challenging the accuracy of the present levels of performance in the IEP, Student shall state whether she is challenging less than all presents levels of performance and identify those at issue.

- For all issues where Student is challenging the IEP goals offered, Student shall state whether she is challenging less than all the offered goals and identify those at issue.

- For all issues where Student contends that additional IEP goals should have been offered beyond additional social emotional/behavior, academic and executive functioning goals, Student shall specify the other area(s) in which additional goals should have been offered and where that allegation was made in the complaint by page and number.

- For all issues where Student is claiming District did not make a clear offer, Student shall identify which parts of the offer were unclear, including identifying each service offered that was not clear.

- Student shall specify the dates of the written IEP offers at issue, including whether there was written IEP offer dated February 10, 2026 which Student is challenging.

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

The parties shall promptly file a written objection if the issues stated in this Order do not accurately reflect Student's claims or any issue is missing or otherwise object to the stated issue. Any objections will be addressed on the first day of hearing. The ALJ will further clarify the issues on the first day of hearing and may request further clarification of the issues at that time.

ISSUES

1. Did District deny Student a FAPE in the March 15, 2024 IEP developed at the January 19 and March 15, 2024 IEP team meetings by:
    A. Failing to develop any accurate present levels of performance?
    B. Failing to identify appropriate areas of need?
    C. Making an offer that was pre-determined, regarding:
        i. All goals?
        ii. All services?
        iii. Placement?
    D. Regarding the goals offered, failing to develop any appropriate annual goals?

E. Failing to develop additional goals in the areas of:
    i. Social emotional/behavior?
    ii. Academics?
    iii. Executive functioning?
F. Failing to offer an appropriate therapeutic program, specifically:
    i. Adequate counseling services?
    ii. An appropriate therapeutic placement?
G. Failing to offer an individualized safety plan?
H. Failing to offer specific wrap around services?
I. Failing to make a clear written offer regarding:
    i. Services?
    ii. Placement?
    iii. The SEEC program offer?

2. Did District deny Student a FAPE by materially failing to implement the March 15, 2024 IEP, specifically:
    A. Any part of the IEP during the time Student was at home through early April 2024?
    B. Any of the related services during the time Student was receiving home hospital instruction through District, including the period she was at Polaris Treatment Center until sometime early June 2024?
3. Did District deny Student a FAPE in the March 25, 2024 IEP by:
    A. Failing to develop accurate present levels of performance?
    B. Failing to identify appropriate areas of need?
    C. Regarding the goals offered, failing to develop any appropriate annual goals?
    D. Failing to develop additional goals in the areas of:

i. Social emotional/behavior?

ii. Academics?

iii. Executive functioning?

E. Failing to offer an appropriate therapeutic program, specifically:

i. Adequate counseling services?

ii. An appropriate therapeutic placement?

F. Failing to offer an individualized safety plan?

G. Failing to offer specific wrap around services?

H. Failing to make a clear written offer regarding:

i. Services?

ii. Placement?

iii. The SEEC program offer?

4. Did District deny Student a FAPE by materially failing to implement the March 25, 2024, specifically:

A. Any part of the IEP during the time Student was at home through early April 2024?

B. Any of the related services during the time Student was receiving home hospital instruction through District, including the period she was at Polaris Treatment Center until sometime early June 2024?

5. Did District deny Student a FAPE developed at the May 30 and June 10, 2024 IEP team meetings by:

A. Failing to appropriately present the educationally related mental health services assessment by:

i. Failing to have the assessor who conducted the assessment present:

a. At the May 30, 2024 IEP team meeting?

b. At the June 10, 2024 IEP team meeting?

ii. Failing to provide a complete presentation of the report to the IEP team:

a. At the May 30, 2024 IEP team meeting?

b. At the June 10, 2024 IEP team meeting?

B. Failing to consider the substance of the evaluations in the development of the IEP, specifically:

i. District's educationally related mental health services evaluation?

ii. The private assessment presented by Parent?

C. Before the IEP team meetings, failing to collaborate with Polaris Treatment Center to understand Student's therapeutic needs while attending the program to assist the IEP team in developing accurate present levels of performance and an appropriate program?

D. Failing to develop any accurate present levels of performance?

E. Failing to identify appropriate areas of need?

F. Making an offer that was pre-determined, regarding:

i. All goals?

ii. All services?

iii. Placement?

G. Regarding the goals offered, failing to develop any appropriate annual goals?

H. Failing to develop additional goals in the areas of:

i. Social emotional/behavior?

ii. Academics?

iii. Executive functioning?

I. Failing to offer an appropriate therapeutic program, specifically:
    i. Adequate counseling services?
    ii. An appropriate therapeutic placement?
J. Failing to offer a residential treatment center placement, specifically Discovery Ranch South?
K. Failing to offer an individualized safety plan?
L. Failing to offer specific wrap around services?
M. Failing to make a clear written offer regarding:
    i. Services?
    ii. Placement?
    iii. The SEEC program offer?

6. Did District deny Student a FAPE in the October 3, 2024 IEP by:
    A. Before the IEP team meeting, failing to collaborate with Discovery Ranch to understand Student's therapeutic needs while attending the program to assist the IEP team in developing accurate present levels of performance and an appropriate program?
    B. Failing to update the IEP team with new information from Discovery Ranch?
    C. Failing to consider the substance of the evaluations in the development of the IEP, specifically:
        i. District's educationally related mental health services evaluation?
        ii. The private assessment presented by Parent?
    D. Failing to develop any accurate present levels of performance?
    E. Failing to identify appropriate areas of need?
    F. Making an offer that was pre-determined, regarding:

i. All goals?

ii. All services?

iii. Placement?

G. Regarding the goals offered, failing to develop any appropriate annual goals?

H. Failing to develop additional goals in the areas of:

i. Social emotional/behavior?

ii. Academics?

iii. Executive functioning?

I. Failing to offer an appropriate therapeutic program, specifically:

i. Adequate counseling services?

ii. An appropriate therapeutic placement?

J. Failing to offer a residential treatment center placement, specifically, Discovery Ranch South?

K. Failing to offer an individualized safety plan?

L. Failing to offer specific wrap around services?

M. Failing to make a clear written offer regarding:

i. Services?

ii. Placement?

iii. The SEEC program offer?

7. Did District deny Student a FAPE by failing to convene Student's annual IEP review in January 2025?

8. Did District deny Student a FAPE by failing to update Student's IEP and make an offer of special education and related services at the March 10, 2025 IEP team meeting, after it determined at the October 3, 2024 IEP

team meeting that Student was medically placed and a private school student?

9. At the March 10, 2025 IEP team meeting, did District significantly impede Parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student by making the unilateral determination that Student was privately placed?
10. Did District deny Student a FAPE at the March 10, 2025 IEP team meeting by failing prior to the meeting to adequately collaborate with the following entities, to develop Student's present levels of performance, goals, related services and placement, specifically:
    A. Discovery Ranch?
    B. Vive?
11. Did District deny Student a FAPE by failing to update Student's IEP and make an offer of special education and related services at the March 24, 2025 IEP team meeting after it determined at the October 3, 2024 IEP team meeting that Student was medically placed and a private school student?
12. At the March 24, 2025 IEP team meeting, did District significantly impede Parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student by making the unilateral determination that Student was privately placed?
13. Did District deny Student a FAPE at the March 24, 2025 IEP team meeting by failing prior to the meeting to adequately collaborate with the following entities, to develop Student's present levels of performance, goals, related services and placement, specifically:
    A. Discovery Ranch?
    B. Vive?

14. Did District deny Student a FAPE by failing to update Student's IEP and make an offer of special education and related services at the April 24, 2025 IEP team meeting after it determined at the October 3, 2024 IEP team meeting that Student was medically placed and a private school student?
15. At the April 24, 2025 IEP team meeting, did District significantly impede Parent's opportunity to participate in the decisionmaking process regarding the provision of a FAPE to Student by making the unilateral determination that Student was privately placed?
16. Did District deny Student a FAPE regarding the May 5, 2025 IEP by:
    A. Failing to include at the IEP team meeting, a school psychologist or therapist with sufficient experience in trauma, residential treatment centers, and profiles similar to Student's, to assist the IEP team in developing an appropriate IEP addressing Student's therapeutic needs?
    B. Regarding the goals offered, failing to develop any appropriate annual goals?
    C. Failing to develop additional goals in the areas of:
        i. Social emotional/behavior?
        ii. Academics?
        iii. Executive functioning?
    D. Failing to offer appropriate therapeutic support, specifically:
        i. Adequate counseling services?
        ii. Counseling support for Parents?
    E. Failing to offer mentor services?
    F. Failing to offer appropriate academic tutoring support?

G. Failing to make a clear written offer regarding the therapeutic behavioral services which were not defined?

H. Failing to develop and offer an appropriate reintegration plan for when Student returned home from the residential treatment center placement?

17. Did District deny Student a FAPE by materially failing to implement the consented to provisions of the May 5, 2025 IEP, specifically:

A. Counseling services between May 28, 2025 through the end of the extended year?

B. All other services between May 28, 2025 through the fall of 2025?

18. Did District deny Student a FAPE regarding the August 11, 2025 IEP by:

A. Failing to include at the IEP team meeting, a school psychologist or therapist with sufficient experience in trauma, residential treatment centers, and profiles similar to Student's, to assist the IEP team in developing an appropriate IEP addressing Student's therapeutic needs?

B. Regarding the goals offered, failing to develop any appropriate annual goals?

C. Failing to develop additional goals in the areas of:

i. Social emotional/behavior?

ii. Academics?

iii. Executive functioning?

D. Failing to offer appropriate therapeutic support, specifically:

i. Adequate counseling services?

ii. Counseling support for Parents?

E. Failing to offer mentor services?

F. Failing to offer appropriate academic tutoring support?

G. Failing to develop and offer an appropriate reintegration plan for when Student returned home from the residential treatment center placement?

19. Did District deny Student a FAPE regarding the November 3, 2025 IEP by:

A. Failing to include at the IEP team meeting, a school psychologist or therapist with sufficient experience in trauma, residential treatment centers, and profiles similar to Student's, to assist the IEP team in developing an appropriate IEP addressing Student's therapeutic needs?

B. Regarding the goals offered, failing to develop any appropriate annual goals?

C. Failing to develop additional goals in the areas of:

i. Social emotional/behavior?

ii. Academics?

iii. Executive functioning?

D. Failing to offer appropriate therapeutic support, specifically:

i. Adequate counseling services?

ii. Counseling support for Parents?

E. Failing to offer mentor services?

F. Failing to offer appropriate academic tutoring support?

G. Failing to develop and offer an appropriate reintegration plan for when Student returned home from the residential treatment center placement?

20. Did District deny Student a FAPE in the IEP developed regarding the February 10, 2026 IEP by:

A. Failing to include at the IEP team meeting, a school psychologist or therapist with sufficient experience in trauma, residential treatment centers, and profiles similar to Student's, to assist the IEP team in developing an appropriate IEP addressing Student's therapeutic needs?

B. Regarding the goals offered, failing to develop any appropriate annual goals?

C. Failing to develop additional goals in the areas of:

   i. Social emotional/behavior?

   ii. Academics?

   iii. Executive functioning?

D. Failing to offer appropriate therapeutic support, specifically:

   i. Adequate counseling services?

   ii. Counseling support for Parents?

E. Failing to offer mentor services?

F. Failing to offer appropriate academic tutoring support?

G. Failing to develop and offer an appropriate reintegration plan for when Student returned home from the residential treatment center placement?

H. Failing to develop an appropriate individual transition plan?

21. Did District deny Student a FAPE between January 2026 and the date the amended complaint was filed on April 6, 2026, by failing to appropriately monitor Student's program to address her decreased attendance?

22. Outside of the IEP team meetings held on and between May 5, 2025 and on February 10, 2026, did District deny Student a FAPE by failing to have a school psychologist or therapist on Student's IEP team with sufficient

experience in trauma, residential treatment centers, and profiles similar to Student's, to guide the IEP team in fully addressing Student's needs regarding:

A. Wrap around support?
B. Individual counseling?
C. Family counseling?
D. Mentoring?

PROPOSED RESOLUTIONS

The resolutions requested by Student include reimbursement for all costs associated with her placement at Discovery Ranch South, expenses incurred at Vive, and for other support since Student returned from the residential treatment center. Student also seeks compensatory education for the failure to implement Student's IEPs and for failing to provide an appropriate transitional program when Student returned from the residential treatment center. Student also seeks revision of Student's IEP to include an appropriate individual transition program, and other support including a school psychologist or educational psychologist with certain expertise, and an appropriate individual transition plan. Student's prehearing conference statement requests additional revisions to Student's IEP.

OAH has not received a copy of District's response to Student's complaint. District was ordered to file its response with OAH by no later than May 18, 2026. (*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 its exhibits. For example, S-1 means Student's exhibit 1, and D-1 means District'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 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, unless the email has attachments in which case each email with attachments shall be a separate exhibit. Any document which had an attachment or enclosure may also be consolidated into one exhibit even if the

attachment or enclosure is also a separate exhibit. 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's exhibits must include a copy of the school calendar for each school year in question, including if they exist, calendars for all extended school years. District will produce someone to testify as to which days school was in session during the regular and extended school years at issue.

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

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 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 present such evidence.

The parties are ordered to meet and confer no later than May 20, 2026, at 4:00 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. 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.

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 to the opposing party 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 upon.

WITNESS SCHEDULE

On the first day of hearing, the parties must provide a joint proposed witness schedule for the entire hearing to the ALJ after meeting and conferring with each other. The schedule should include the first and last name of each witness, which party is

calling each 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 into the schedule. 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. The parties may prepare the initial schedule assuming hearing days on Tuesdays through Thursdays.

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, unless otherwise ordered. 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;
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording; and
7. the parties shall not use an artificial intelligence application or program to record or transcribe the hearing and smart glasses are prohibited.

Student's counsel and District counsel's requests to make an audio recording of the hearing are granted. The parties shall be allowed to make an audio recording of the hearing subject to the above conditions and any other orders made at hearing.

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.

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 recording or transcript 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

A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

On April 6, 2026, Student filed a Motion to Order District to prospectively fund assessors Student intends to call at hearing as witnesses, including independent educational evaluator, Ranzi Nashashibi, as well as Drs. Sandra Solanot and Christy Bock who previously assessed Student on District's behalf. Student argued that the law requires District to fund the costs associated with the assessors presenting their findings at the due process hearing.

On April 8, 2026, District opposed the motion on various grounds including that the law does not allow for the recovery of fees paid to experts for their testimony, and that the case miscited by Student does not hold otherwise.

Student's motion was denied at the PHC. Student cites no persuasive authority requiring District to prospectively fund Student's expert witnesses for their preparation and attendance at hearing to testify. Contrary to Student's assertion, *M.M. v. Lafayette School District* did not hold that a school district must pay the full costs associated with the evaluator presenting their findings at a due process hearing. (N.D.Cal. Feb. 7, 2012, CV 09–4624, 10–04223 SI) 2012 WL 398773.) In that case, the issue was whether the school district was liable for costs of the evaluator's presentation of the independent evaluation results at an IEP team meeting, not at a due process hearing. (2012 WL 398773, at *11.) In fact, the United States Supreme Court has made clear that the Individuals with Disabilities Education Act does not authorize the recovery of expert fees as costs to prevailing parties. (*Arlington Central School Board of Education v. Murphy* (2006) 548 U.S. 291, 298 [126 S.Ct. 2455].)

There are no other prehearing motions pending or contemplated by the parties. 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. Smart glasses are prohibited.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested an accommodation or an 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 CLOSED TO THE PUBLIC

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

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 parties settle 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