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 2024060681

ORDER GRANTING STUDENT'S REQUEST FOR NAMES AND CONTACT INFORMATION FOR POTENTIAL WITNESSES

JULY 3, 2024

On July 2, 2024, Student filed a motion seeking the full names and contact information for potential witnesses identified in educational records only as "Patricia," who was Student's behaviorist, and "Alexis," who was Student's aide. Student also seeks the names and emails of all other professionals who were working with Student at a District interim placement at Jane Lathrop Stanford Middle School, including but not limited to the providers of specialized academic instruction, occupational therapy, speech therapy, adapted physical education and other related services provided during that placement. Student argues that he would like to subpoena all the middle school

professionals who were working with Student between May 7, 2024 and May 30, 2024. The request is specific, limited in time and clearly related to Student's allegations that District denied him a free appropriate public education. According to the proof of service attached to the motion, Student served it on District's lawyers on July 1, 2024.

On July 3, 2024, District opposed the request, making a variety of unpersuasive arguments. Most unpersuasive is the contention that the motion was an "*ex parte* communication with OAH." An *ex parte* communication is a "communication . . . regarding any issue in the proceeding, to the presiding officer from . . . an interested person . . . , without notice and opportunity for all parties to participate in the communication." (Gov. Code, § 11430.10. (a).) Since District's lawyers were served with the motion, had notice and opportunity to respond, and have in fact done so, their position that the motion was an *ex parte* communication is frivolous.

District further argues that the motion is premature, because the prehearing conference has not yet occurred nor have the parties yet met and conferred regarding the identity of potential witnesses. These arguments are similarly unpersuasive. Student's right to prepare to secure the attendance of witnesses is not limited in time to the prehearing conference, is not restrained by the meet and confer process, and is not limited to those persons District itself intends to call as its own witnesses. The Motion is granted.

The IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings. (Ed. Code, § 56505, subd. (e).) California Code of Regulations, title 5, section 3082, subdivision (c)(2), specifies the right of the parties in a special

education hearing to compel the attendance of witnesses at hearing. Obviously, Student must know the full names of the potential witnesses in order to exercise these rights. After identifying the names and contact information for these potential witnesses, if District wishes to produce them at hearing without the necessity of Student issuing a subpoena to secure their attendance, District is at liberty to do so.

ORDER

1. District shall within five days of this Order provide to Student the full names and email addresses of "Patricia," who was Student's behaviorist, "Alexis," who was Student's aide, and all other professionals who were working with Student at Jane Lathrop Stanford Middle School between May 7, 2024 and May 30, 2024, including but not limited to the providers of specialized academic instruction, occupational therapy, speech therapy, adapted physical education and other related services.

IT IS SO ORDERED.

June Lehrman

June Lehrman
Administrative Law Judge
Office of Administrative Hearings