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 2025030845

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, GRANTING MOTION TO DISMISS ISSUE, AND DENYING AS MOOT MOTION TO QUASH SUBPOENA DUCES TECUM

MAY 5, 2025

On April 28, 2025, Administrative Law Judge Robert G. Martin, 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.

Attorney Nicole Amey appeared on behalf of Student. Attorney Nicole Mirkazemi appeared on behalf of Palo Alto Unified School District, referred to as Palo Alto. 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 6, 7, and 8, 2025, continuing day to day thereafter 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 five or six days to complete the hearing. If needed, 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 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

In this Order, an individualized education program is called an IEP, and a free appropriate public education is called a FAPE. The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are:

ISSUES

1. Did Palo Alto deny Student a FAPE from March 20, 2023 to the end of the 2022-2023 school year, by:
    a. Failing to provide Student an interim IEP after Student enrolled in Palo Alto on March 22, 2023?
    b. Predetermining Student's educational program?
2. Did Palo Alto deny Student a FAPE during the 2023-2024 school year by:
    a. Failing to provide Parents all of Student's educational records within statutory timelines when Parent requested them?
    b. Failing to appropriately assess Student in the areas of:
        i. Psychoeducation;
        ii. Speech and language; and
        iii. Occupational therapy?
    c. Failing to hold an IEP meeting and make an IEP offer of FAPE to Student by the start of the 2023-2024 school year?
    d. Failing to offer Student any reading comprehension goals
    e. Failing to offer Student appropriate and measurable annual goals in the areas of:
        i. Social pragmatics;
        ii. Social/behavioral/emotional skills;

iii. Study/organizational skills; and

iv. Attention?

f. Failing to offer Student adequate services to address his needs in the areas of:

i. Attention deficit and hyperactivity disorder;

ii. Speech and language;

iii. Occupational therapy;

iv. Attention and distractibility;

v. Mental health; and

vi. Behavior intervention?

g. Offering Student placement on a large, comprehensive middle school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support?

h. Failing to file for due process after Parents did not fully consent to Student's IEP dated August 24, 2023, or the subsequent May 14, 2024 IEP?

i. Failing to timely finalize a contract with Student's independent psychoeducational assessor?

j. Imposing unreasonably restrictive criteria with respect to Parent's October 15, 2023 request for independent educational evaluations in the areas of:

i. Speech and language;

ii. Occupational therapy; and

iii. Assistive technology?

k. Predetermining it would offer Student placement in an Academic Communication Class in its IEP's dated:

i. August 10, 2023;

ii. August 24, 2023; and

iii. May 14, 2024?

3. Did Palo Alto deny Student a FAPE during the 2024-2025 school year by:

   a. Failing to provide Parents all of Student's educational records within statutory timelines when Parent requested them?

   b. Failing to appropriately assess Student in the areas of:

      i. Psychoeducation;

      ii. Speech and language; and

      iii. Occupational therapy?

   c. Failing to hold a timely annual IEP meeting and make an IEP offer of FAPE to Student by the start of the 2024-2025 school year?

   d. Failing to offer Student any reading comprehension goals?

   e. Failing to offer Student appropriate and measurable annual goals in the areas of:

      i. Social pragmatics;

      ii. Social/behavioral/emotional skills;

      iii. Study/organizational skills; and

      iv. Attention?

   f. Failing to offer Student adequate services to address his needs in the areas of:

      i. Attention deficit and hyperactivity disorder;

      ii. Speech and language;

      iii. Occupational therapy;

      iv. Attention and distractibility;

      v. Mental health; and

vi. Behavior intervention?

g. Offering Student placement on a large, comprehensive high school campus with large class sizes, instead of a smaller campus with smaller class sizes and additional adult support?

h. Continuing to fail to file for due process when Parents did not fully consent to Student's IEP dated August 24, 2023, or the subsequent IEP's dated May 14, 2024 IEP, and December 9, 2024.

i. Predetermining the offer of placement in an Academic Communication Class in its December 9, 2024 IEP?

j. Continuing to impose unreasonably restrictive criteria with respect to Parent's October 15, 2023 request for independent educational evaluations in the areas of:

    i. Speech and language

    ii. Occupational therapy; and

    iii. Assistive technology?

k. Failing to conduct a timely and appropriate post-secondary/transition assessment of Student?

l. Failing to offer Student an appropriate transition plan?

A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing, prior to the first day of hearing, stating its concern and referring to supporting portions of the complaint.

MOTION TO DISMISS STUDENT'S ISSUE 9

On April 23, 2025, Palo Alto filed a motion to dismiss Student's Issue 9, which alleged Palo Alto's conduct during the relevant statutory period denied Student's and Parents' rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et

seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 12101, et seq.), and related civil rights statutes. Student did not oppose Palo Alto's motion.

The purpose of the Individuals with Disabilities Education Act, or IDEA, (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 12101, et seq.), or related civil rights statutes. Student's Issue 9 was therefore dismissed at the PHC.

PROPOSED RESOLUTIONS

Student's requested resolutions include a decision finding Student the prevailing party on all Student's issues, and an order directing Palo Alto to fund Student's placement at a nonpublic school with a small campus and staff with specific training in working with students with autism, specific learning disability, and attention deficit and hyperactivity disorder. Student also requested an order that Palo Alto reimburse Parents for the costs of Student's private placement at Hope Academy, and provide independent education evaluations in the areas of speech and language, occupational

therapy, assistive technology, and transition, by assessors selected by Parents, not subject to Palo alto's criteria for independent evaluators. Student also requested that Palo Alto be ordered to provide Student compensatory specialized academic instruction, occupational therapy, speech and language, behavior, and social emotional services, and training of Palo Alto staff on identifying disabilities, conducting assessments, and developing appropriate goals and IEP's.

Palo Alto filed its response to Student's complaint on March 28, 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,

for district, before the number to identify Palo Alto's 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 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 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 calendars for the 2022-2023, 2023-2024, and 2024-2025 school years.

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.

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 to call witnesses out of order.

MOTION TO QUASH STUDENT SUBPOENA DUCES TECUM REQUESTING WITNESS CONTACT INFORMATION

On April 24, 2025, Palo Alto filed a motion to quash Student's April 18, 2025, subpoena directed to Palo Alto, which requested the name of Palo Alto's custodian of records, and the addresses of a list of Palo Alto employees that Student intended to call as witnesses at hearing, so that Student could subpoena them to appear at hearing. Student filed an opposition to Palo Alto's Motion on April 28, 2025. Palo Alto

contended the subpoena duces tecum improperly sought private and confidential information regarding former employees that Palo Alto could not be required to disclose, and also constituted prehearing discovery not permitted in due process cases.

Neither party included a copy of Student's April 18, 2025 subpoena in their submissions. However, Student's attorney confirmed at the PHC that the subpoena called for Palo Alto to provide Student the requested information before the first day of hearing.

Special education law does not specifically address motions to quash subpoenas or subpoenas duces tecum. In ruling on such motions, 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.

Student's request for the last known addresses of former employees identified by Student as potential witnesses was not improper. Contact information for identified witnesses is ordinarily produced during discovery, and is neither unduly personal nor overly intrusive. (*Crab Addison, Inc. v. Superior Court* (2008) 169 Cal.App.4th 958, 967.)

In special education due process proceedings, the parties have the right to present evidence and compel the attendance of witnesses at hearings. (20 U.S.C. § 1415(h); Ed. Code, 56505, subd. (e).) The parties cannot timely subpoena witnesses whose addresses are unknown. Accordingly, on an equitable basis, ALJs commonly order the parties to provide such information during PHCs, while also ordering the parties to maintain the confidentiality of such information.

In this matter, Palo Alto agreed at the PHC to make current employees available as witnesses without the need for subpoena. The ALJ ordered Palo Alto to inform Student by the close of business the day following the parties' exchange of final witness lists if any witness identified by Student as a Palo Alto employee was not currently employed by Palo Alto, and needed to be subpoenaed to appear at the hearing. Palo Alto was ordered to either agree to accept service of a subpoena for such witnesses, or provide Student with the witness' most recent contact information.

Palo Alto's agreement to produce employee witnesses, and the ALJ's order to either accept service for, or produce contact information for, former employees mooted both Student's subpoena and Palo Alto's motion to quash. On that ground, the motion to quash is denied.

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 were ordered to meet and confer on May 1, 2025, at 8:00 AM to discuss scheduling witnesses and how much time each witness will take. Student's attorney was ordered to place the call to Palo Alto's attorney to start the meet and

confer. The parties were ordered to 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 were ordered to 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.

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.

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.) In this case, Student

requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Palo Alto's, unless otherwise ordered.

WITNESS SCHEDULE

The parties must provide a joint proposed witness schedule to the ALJ on the first day of hearing. The list should include the first and last name of the witness, the witness' title, 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 schedule. 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.

ELECTRONIC RECORDINGS

AUDIO RECORDING

Both parties requested permission to make an audio recording of the hearing for attorney note taking purposes.

A party may request permission to make an audio recording of the hearing for attorney note-taking purposes. 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.

Each party may make an audio recording of the hearing for attorney note taking purposes, subject to the previously-stated conditions.

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 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 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.

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

At the PHC, the ALJ heard evidence and argument on the Order to Show Cause issued by OAH in this case on March 24, 2025, and Palo Alto's Motion for Sanctions, or, Alternatively, to Shift Expenses, filed April 24, 2025. The Order to Show Cause and Motion for Sanctions, or, Alternatively, to Shift Expenses, will be addressed in a separate Order.

At the PHC, Student requested that the hearing be continued at the end of the May 6, 2025, hearing day to the afternoon of May 8, 2025, to allow Student's counsel to attend a District Court case management conference and motion hearing on May 7, 2025, and to accommodate a personal commitment of Student's counsel on the morning of May 8, 2025. Student's request for a scheduling accommodation will be addressed at the hearing.

District indicated it might make a motion to exclude testimony of certain witnesses identified by Student, including a behaviorist and two assistive technology specialists, on grounds of relevance based on their lack of involvement in events relevant to this case.

No other prehearing motions were pending or contemplated. 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

Neither party requested an accommodation or language 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 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.



Robert G. Martin
Administrative Law Judge
Office of Administrative Hearings