BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

KIPP BRIDGE ACADEMY CHARTER SCHOOL.

OAH CASE NUMBER 2025050232

ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE BY VIDEOCONFERENCE AND ORDER DENYING KIPP BRIDGE ACADEMY'S MOTION TO CONSOLIDATE

MAY 21, 2025

On May 19, 2025, Administrative Law Judge Thanayi Lindsey, Office of Administrative Hearings, held an expedited 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.

Attorneys Idanys Pomares-Molina and Gregory McNair appeared on behalf of Student. Attorneys Brittnee Gillespie-Malone and Stacy Tolkin appeared on behalf of

Kipp Bridge Academy. The expedited PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

EXPEDITED HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The expedited hearing will take place on May 28 and 29, 2025 and continue day to day, Mondays and Fridays included, 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 6 days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing. The parties may discuss at the beginning of the due process hearing the schedule for Friday, May 30, 2025.

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.

EXPEDITED ISSUES AND PROPOSED RESOLUTIONS

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

Pursuant to discussions with the parties during the expedited PHC, the ALJ has clarified the statement of expedited issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist*. (9th Cir. 2002) 291 F.3d 1086, 1090. No change in substance has been made. The parties are responsible for carefully reviewing the expedited issue as stated in this expedited PHC order. This will be the expedited hearing issue. 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.

The expedited issue at the expedited due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the expedited PHC is:

EXPEDITED ISSUE

1. Was Student's aggressive behavior that was subject to the April 17, 2025 manifestation determination review the direct result of Kipp Bridge Academy's failure to implement Student's IEP?

PROPOSED RESOLUTIONS

The resolutions requested by Student include an order that Kipp Bridge Academy revise and implement the behavior intervention plan and implementation of Student's IEP.

Kipp Bridge Academy filed its response to Student's complaint on May 13, 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. Kipp Bridge Academy must use the letter C before the number to identify Kipp Bridge Academy's exhibits. For example, S-1 means Student's exhibit 1 and C-1 means Kipp Bridge Academy'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.

Kipp Bridge Academy'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 on 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, May 22, 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, if any. 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, Kipp Bridge Academy shall inform Student which proposed witnesses are Kipp Bridge Academy employees. Kipp Bridge Academy shall also identify the witnesses on Student's list that require a subpoena. Kipp Bridge Academy may agree to accept service for a witness under Kipp Bridge Academy's control or provide Student with the witness's most recent contact information.

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.

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.

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

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 expedited 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

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; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and Kipp Bridge Academy's requests to make an audio recording of the hearing are granted.

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.

ORDER DENYING KIPP BRIDGE ACADEMY'S MOTION TO CONSOLIDATE

On May 2, 2025, Student filed with the Office of Administrative Hearings, called OAH, a request for due process hearing in OAH case number 2025050232, called Student's Case, naming Kipp Bridge Academy. A request for due process hearing is called a complaint. On May 7, 2025, OAH issued a scheduling order bifurcating Student's complaint and issued expedited and unexpedited hearing dates. Student's expedited hearing is scheduled to commence on May 28, 2025. Student's unexpedited hearing is scheduled for June 24, 2025.

On May 7, 2025, Kipp Bridge Academy filed a complaint in OAH case number 2025050374, called Kipp Bridge Academy's case, naming Student. May 9, OAH issued a scheduling order to hear the expedited issues for June 10, 2025. On May 12 2025, OAH issued an amended scheduling order for Kipp Bridge Academy's due process hearing to commence on June 3, 2025.

On May 14, 2025, Kipp Bridge Academy filed a motion to consolidate Student's expedited and non-expedited issues with Kipp Bridge Academy's issues into one expedited due process hearing on the grounds that consolidation will promote judicial economy because Students and Kipp Bridge Academy both complaints involve the same issue, parties, overlapping witnesses, and presentation of evidence. Kipp Bridge Academy argued that consolidation furthers the interest of justice due by saving time and preventing inconsistent rulings.

On May 16, 2025, Student filed an objection to consolidation on the ground that the consolidation will cause undue hardship and prejudice because Student will not have time to prepare their case in chief and the defend Kipp Bridge Academy's case in chief in the expedited case as well as the non-expedited case. Student argued that the

unexpedited issues were complex and needed more preparation. On May 19, 2025, Kipp Bridge Academy filed a reply to Student's opposition. At the PHC, Kipp Bridge Academy modified the request for consolidation to only consolidate the expedited matters. Student did not oppose the suggestion.

The expedited hearing must occur within 20 school days of the date the party requested the expedited due process hearing. The state or local educational agency is responsible for arranging the expedited due process hearing. *Dispute Resolution Procedures under Part B of the Individuals with Disabilities Educ. Act (Part B)*,61 IDLER 232(OSEP 2013). The state hearing officer must then make a determination within 10 school days after the hearing takes place. 34 CFR 300.532(c)(2).

The parent of a child with a disability may appeal a manifestation determination on an expedited basis. (20 U.S.C. § 1415k (3); 34 C.F.R. § 300.532(a).) Generally, a school district that proposes to change the placement of a child with a disability because of a violation of a code of student conduct must conduct a review of relevant information in the student's file and provided by the parent to determine:

- if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- if the conduct in question was the result of the local agency's failure to implement the IEP.

(20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e).)

If either of these circumstances is applicable, the conduct is determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E)(ii). If the behavior is determined to have been a manifestation of the child's disability, the student's IEP team

must take statutorily mandated steps to address the behavior. (20 U.S.C. § 1415(k)((1)(F); 34 C.F.R. § 300.530(f).)

A school district that believes maintaining the current placement of a child with a disability is substantially likely to result in injury to the child or others may request a hearing on an expedited basis to remove the child to an appropriate interim alternative educational setting for not more than 45 school days. (20 U.S.C. § 1415(k)(3)(B)(ii); 34 C.F.R. § 300.532(b)(2)(ii).)

Here, Student's complaint alleges that Kipp Bridge Academy's April 17, 2025, manifestation review incorrectly determined that Student's behaviors were not the direct result of Kipp Bridge Academy's failure to implement Student's IEP. The complaint alleges because of that incorrect determination, Kipp Bridge Academy did not take steps to remedy the implementation deficiencies and, instead, recommended an inappropriate change in placement. Kipp Bridge Academy's complaint seeks a determination that maintaining Student's current educational placement is substantially likely to result in injury to Student and others, based on Student's conduct before and after the manifestation determination review, and that its proposed interim alternative educational setting is appropriate.

Both of the complaints allege expedited issues, but they are sufficiently disparate that consolidation is not warranted. Were Student to prevail on the claim that Student's conduct was the result of Kipp Bridge Academy's failure to implement Student's IEP, Kipp Bridge Academy would need to convene an IEP team meeting to review the implementation failures and the impact on the proposed change of placement. Kipp Bridge Academy's expedited claims concern whether Student is an ongoing danger to Student or others and needs an interim alternative educational setting for safety. Student's claim looks back at the appropriateness of the IEP already in place, and Kipp

Bridge Academy's claim looks forward to its ability to maintain the safety of Student and others for the next 45 school days and the appropriateness of a proposed setting. The claims are not sufficiently related in fact or law to warrant consolidation.

In addition, Student is entitled to an expedited resolution of Student's claims. Consolidation with Kipp Bridge Academy's claims would add additional witnesses and days of hearing, resulting in unavoidable and impermissible delay. It would also require the ALJ to issue decisions on multiple claims by multiple parties under an expedited timeline for one claim, imposing an undue burden on the judicial process.

MOTIONS

No other prehearing motions are 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 EXPEDITED 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 representatives 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 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 email 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.

EXPEDITED HEARING CLOSED TO THE PUBLIC

The expedited 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.

Thanayi Lindsey
Thanayi Lindsey (May 21, 2025 11:27 PDT)

Thanayi Lindsey
Administrative Law Judge
Office of Administrative Hearings