

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF  
PARENTS ON BEHALF OF STUDENT,

V.

VACAVILLE UNIFIED SCHOOL DISTRICT

CASE NO. 2024050916

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING  
BY VIDEOCONFERENCE, DENYING REQUEST FOR  
IN-PERSON DUE PROCESS HEARING

DECEMBER 2, 2024

On December 2, 2024, Administrative Law Judge Theresa Ravandi, 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 Tania Whiteleather appeared on behalf of Parents and Student. Attorney Jan Tomsy appeared on behalf of Vacaville 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 December 10, 11, and 12, 2024, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. each day and generally end at 3:30 p.m., unless otherwise ordered. The parties anticipate it will take approximately seven days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing. Vacaville's request to not be in session on Friday, December 13, 2024, due to a scheduling conflict was not opposed and is granted.

### HEARING LOCATION

As addressed in the Motion Section, OAH denied Student's request for an in-person hearing. 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

Based on discussion with the parties, the issues in Student's complaint have been clarified and reorganized. No substantive changes have been made. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431.) A party believing that this Order does not reflect their understanding of the issues as identified in the complaint, discussed at the prehearing conference, and determined herein, shall promptly file a written notice, prior to the first day of hearing, stating any discrepancy and referring to supporting portions of the complaint. 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 Vacaville deny Student a free appropriate public education, called FAPE beginning May 24, 2022, through the remainder of the 2021-2022 school year, including extended school year, and the 2022-2023 school year, including extended school year by:
  - a. Failing to conduct a comprehensive vocational/transition evaluation;
  - b. Failing to assess in all areas of suspected disability, specifically, visual processing also known as binocular vision and auditory processing;
  - c. Failing to timely provide the requested independent speech and language evaluation;
  - d. Failing to offer an appropriate individualized transition plan;
  - e. Failing to offer goals to address Student's speech and language needs;

- f. Failing to offer an academic tutor and appropriate academic services;
  - g. Failing to offer appropriate social skills services;
  - h. Failing to offer appropriate behavior services;
  - i. Failing to offer appropriate mental health services;
  - j. Failing to offer appropriate speech and language services;
  - k. Failing to offer placement in the least restrictive environment given Student was working towards a regular high school diploma;
  - l. Implementing a behavior plan without Parent consent; and
  - m. Implementing an inappropriate behavior plan that increased Student's avoidance of classroom tasks and failed to build his tolerance for non-preferred tasks and individuals?
2. Did Vacaville deny Student a FAPE during the 2023-2024 school year, including extended school year, by:
- a. Failing to conduct a comprehensive vocational/transition evaluation;
  - b. Failing to assess in all areas of suspected disability, specifically, visual processing also called binocular vision and auditory processing;
  - c. Failing to timely provide the requested independent speech and language evaluation;
  - d. Failing to timely provide the requested independent transition/vocational evaluation;
  - e. Failing to offer an appropriate individualized transition plan;
  - f. Failing to offer goals to address Student's speech and language needs;
  - g. Failing to offer an academic tutor and appropriate academic services;
  - h. Failing to offer appropriate social skills services;

- i. Failing to offer appropriate behavior services;
- j. Failing to offer appropriate mental health services;
- k. Failing to offer appropriate speech and language services;
- l. Failing to offer placement in the least restrictive environment given Student was working towards a regular high school diploma;
- m. Implementing a behavior plan without Parent consent; and
- n. Implementing an inappropriate behavior plan that increased Student's avoidance of classroom tasks and failed to build his tolerance for non-preferred tasks and individuals?

## PROPOSED RESOLUTIONS

The resolutions requested by Student include independent educational evaluations, a transitional/vocational program in the least restrictive environment, intensive reading service, appropriate speech services, compensatory services, and an offer of FAPE in the least restrictive environment for the 2024-2025 school year.

Vacaville filed its response to Student's amended complaint on November 15, 2024. (*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](mailto: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. Vacaville 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 Vacaville'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.

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

Electronic copies of exhibits must be uploaded to the electronic evidence platform called Case Center by 5:00 p.m. 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, 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 at 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 December 5, 2024, 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, Vacaville shall inform Student which proposed witnesses are District employees. Vacaville shall also identify the witnesses on Student's list that may require a subpoena. Vacaville may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information.

## PARTICIPANT INFORMATION

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 p.m. 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.

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## 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 Vacaville's, unless otherwise ordered.

## WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

## SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

## AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

## 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 and Vacaville are granted permission to make an audio recording of the hearing are granted subject to these requirements.

## VIDEO RECORDING

Student and Vacaville are granted permission to make an audio recording of the hearing are granted subject to these requirements.

## 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

### STUDENT'S MOTION FOR AN IN-PERSON HEARING

In his PHC statement, Student moved for an in-person hearing. Student generally claims a videoconference hearing violates his due process rights guaranteed by federal and State law by preventing Parent from being physically accompanied and advised by counsel, in person, and from confronting and cross-examining witnesses in person and viewing the documents they are using during the hearing. Both parties were heard as to Student's request during the PHC. Vacaville did not oppose the motion.

The Individuals with Disabilities Act, called IDEA, requires that a due process hearing be conducted at a place "reasonably convenient" to parents and the student. (34 C.F.R. § 300.515(d) (2006); Ed. Code, § 56505, subd. (b).) The IDEA, however, does not specify the procedures used at hearings. Rather, the IDEA requires that a hearing officer "possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice ...." (20 U.S.C. § 1415(f)(3)(A)(iii).) Otherwise, it defers to state practice in the conduct of hearings.

The United States Department of Education has traditionally declined to regulate the conduct of the due process hearing itself. (See U.S. Dept. of Education, Off. of Special Education and Rehabilitation Services, final Regs., *Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, Analysis of Comments and Changes*, com. to § 300.511, 71 Fed.Reg. 46540, 46704 (Aug. 14, 2006)[2004 Comments,

“We believe that States should have considerable latitude in determining appropriate procedural rules for due process hearings as long as they are not inconsistent with the basic elements of due process hearings and rights of the parties set out in the Act and these regulations.”].)

California Education Code section 56505, subdivision (a) requires that the hearing shall be conducted in accordance with regulations adopted by the State Board of Education. The California Department of Education explicitly permitted the use of a video or telephonic hearing in California Code of Regulations, title 5, section 3082, subdivision (g). California Code of Regulations, title 5, section 3082, subdivision (g), provides,

“Notwithstanding Government Code section 11440.30 of the APA, the hearing officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.”

This is the same language as in Government Code section 11440.30, subdivision (a).

The California Department of Education is authorized by Education Code section 56100, subdivision (j), to adopt regulations for special education due process hearings. Pursuant to that authority, the California Department of Education promulgated California Code of Regulations, title 5, section 3089, that exempted specific provisions of the Administrative Procedures Act, including Government Code, section 11440.30, subdivision (b), which limited the use of telephonic or video hearings if a party objected. As such, the California Department of Education specifically removed the possibility of parental veto of a decision to proceed virtually. According to the California state regulations, special education hearing officers have the authority to decide whether a hearing should be in person or virtual. (Cal. Code Regs., tit. 5, § 3082 (g).)

Student failed to provide persuasive legal support for his contentions that a videoconference hearing denies him due process. Nothing in the OAH procedures for virtual hearings precludes attorneys and their clients from participating in the due process hearing from the same physical location. Student's counsel and Parent can participate in the videoconference hearing from the same room so they can communicate directly with each other during the hearing. Should the parties choose to participate from separate locations utilizing the virtual format, OAH procedures permit parties to communicate confidentially through separate videoconference breakout rooms. The parties and their representatives may email or text each other during the hearing so long as the party or representative is not then testifying, and it is not disruptive of the hearing process. Nothing prevents the parties or counsel from requesting a break to contact each other and speak outside the presence of the ALJ.

Additionally, the procedures OAH has established for videoconference hearings comply with Education Code, section 56505, subdivision (e), and California Code of Regulations, title 5, section 3082, subdivision (g), by creating a system for the parties

to electronically upload hearing exhibits well before the hearing starts, and affords witnesses the ability to view these during the videoconference hearing. All participants will be able to view each evidentiary exhibit through the electronic Case Center platform. Even if OAH were to grant an in-person hearing, it would still use the Case Center platform as opposed to paper copies of exhibits compiled in three ring exhibit binders. OAH procedures require parties to timely exchange electronic copies of exhibits as required by Education Code section 56505, subdivision (e)(7).

There is no right under the IDEA or California law to confront witnesses in person in special education administrative proceedings. Student raises the concern that a witness may view an unauthorized document during their testimony. Student's concern is speculative and can be addressed at the time of hearing by admonition of the hearing officer and through witness examination.

OAH's authority to conduct due process hearings by videoconference is clear under state and federal law. Student offered no law or evidence that OAH's established procedures for videoconference hearings deny Student the rights afforded by Education Code, section 56505, subdivision (e).

According to the California state regulations implementing the IDEA, special education hearing officers have the authority to decide whether a hearing should be in person or virtual. (Cal. Code Regs., tit. 5, § 3082 (g).) Here, Student has not presented any compelling argument that based on the facts or circumstances relevant to this case, this hearing should be held in person. Having failed to establish good cause as to why this case should be held in person, Student's motion for an in-person hearing is denied.



Student's counsel advised that she is scheduled to begin another due process hearing before OAH this week. If this other case proceeds, it will conflict with the current hearing schedule for this matter. Student will be filing a motion to continue if the conflicting matter proceeds to hearing this week.

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 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 a reasonable accommodation or a 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 OPEN TO THE PUBLIC

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

Either party may forward the hearing invitation to observers. Observers will only be admitted to the hearing at the beginning of the hearing day and after the lunch break. Observers do not need to identify themselves but must have respectful usernames when joining the hearing. Any prospective witness may not observe the hearing until their testimony is completed and with the ALJ's permission.

By choosing an open hearing, Student is on notice that highly sensitive personal information will be seen and heard by observers.

The following Order applies to observers:

1. Microphone and video must be off at all times, unless otherwise ordered by the ALJ.
2. Hearing observers will not be allowed to record, photograph, or broadcast the hearing. (California Rules of Court, rule 1.150.) Any person who suspects that a member of the public is violating this rule, must immediately report the violation to the ALJ.
3. An ALJ may exclude persons whose actions impede the orderly conduct of the hearing, restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030, subd. (e).)

Failure to follow these orders may result in sanctions, including removal or other sanctions as the law allows. Further, an ALJ may order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case, including to protect a minor witness or a witness with a developmental disability. (Gov. Code § 11425.20, subd. (a).)

## 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 p.m. 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.

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## 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

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings