

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023090117

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE DENYING MOTION TO
CONTINUE, DENYING MOTION TO CONSOLIDATE,
DENYING MOTION TO DISMISS, GRANTING MOTION TO
QUASH, AND DENYING REQUEST FOR IN-PERSON
HEARING

JANUARY 26, 2024

On January 25, 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 Jack Clarke appeared on behalf of Riverside Unified School District along with legal assistant Jacquelyn Arredando. 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 February 8, 2024, 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 more than four days to complete the hearing. 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

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); See 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.), the Americans with Disabilities Act or ADA (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). The ALJ dismissed Student’s originally number Issue 7, which alleged Riverside charged Parents an unreasonable amount for copies of school records, and Issue 11, which identified claims under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and state civil rights laws. Both of these claims are outside OAH’s jurisdiction.

The remaining issues in Student’s amended 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.) Riverside objected to Student’s issue regarding goals because Student did not identify a specific IEP at issue. Riverside objected to Student’s issue regarding a reading program on the grounds that it improperly implicates methodology. Riverside also objected to the independent educational evaluation issue because Riverside had not conducted the underlying evaluations. Riverside’s objections were overruled. Nothing in this Order prevents Riverside from presenting any defense to the identified issues.

A party believing that this Order does not reflect their understanding of the issues as identified in the amended 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 Riverside deny Student a free appropriate public education beginning October 24, 2022, through the 2022-2023 school year, including extended school year, and the 2023-2024 school year until October 6, 2024, by failing to:
 - a. Timely respond to Parent's March 2023 requests for independent educational evaluations in the areas of functional behavior, central auditory processing, mental health, occupational therapy including sensory issues, assistive technology, social skills, and visual processing;
 - b. Offer an appropriate reading intervention program;
 - c. Offer measurable, and sufficiently ambitious goals;
 - d. Offer goals adequate to meet Student's academic and speech needs;
 - e. Timely provide service logs and data collection on goals in response to Parents' March 2023 request for education records; and
 - f. Provide monthly academic progress reports during the 2022-2023 school year, thereby denying Parents meaningful participation?

PROPOSED RESOLUTIONS

The resolutions requested by Student include multiple independent educational evaluations and compensatory education.

Riverside filed its response to Student's amended complaint on December 1, 2023. (*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. Riverside 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 Riverside'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.

Riverside'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 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, 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 February 2, 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, Riverside shall inform Student which proposed witnesses are District employees. Riverside shall also identify the witnesses on Student's list that may require a subpoena. Riverside may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information.

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 Riverside'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.

Both parties' requests to make an audio recording of the hearing are granted subject to these requirements.

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 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

RIVERSIDE'S MOTION TO DISMISS AMENDED COMPLAINT

January 23 2024, Riverside filed a motion to dismiss Student's amended complaint on the grounds Student's claims are barred by a settlement and release agreement executed by the parties on November 3, 2022. The motion is supported by the sworn declaration of Riverside's counsel. Attached to the motion is a heavily redacted copy of the settlement agreement and several individualized education programs, called IEPs. Riverside contends the parties released all claims and the right to bring any complaint from November 2022 through the date the IEP, which would review Student's independent educational evaluations, was completed. Riverside asserts this IEP was completed on October 26, 2023. During the PHC, Student was afforded an opportunity to be heard. Student opposed the motion on the grounds its presents factual issues that must be adjudicated.

Issues regarding the 2022 settlement agreement involve mixed questions of law and fact that cannot be determined through the motion process. Student is entitled to a full evidentiary hearing to determine the scope of the settlement and release agreement and its impact on the current matter. As a result, Riverside's request to dismiss Student's complaint based on the claims being barred by the 2022 settlement agreement is denied.

Student requested that the impact of the settlement agreement, if any, on Student's amended complaint be addressed as a preliminary issue at the start of the hearing. Riverside did not oppose.

The parties will be given a short period of time to present evidence on the time frame of the release and waiver language of the 2022 settlement agreement, and any impact on Student's amended complaint, on the first day of hearing. The ALJ will consider this evidence and then make a ruling on the record whether the settlement agreement bars any of Student's claims. The parties shall be prepared to present evidence on any remaining claims immediately following this ruling. The ALJ's ruling will be contained in the final written decision.

RIVERSIDE'S MOTION TO CONSOLIDATE AND TO CONTINUE

On January 24, 2024, Riverside filed a request for due process naming Student. On this same date, Riverside filed a motion to consolidate Student's Case with Riverside's Case and to continue the consolidated matter to the week of February 20, 2024. Riverside seeks to defend its 2023 annual IEP offer for Student.

Riverside erroneously served its complaint and motion on Ms. Whiteleather rather than Parents. Parents are not yet aware of Riverside's Case or motion as they

have not been served, and they have not retained Ms. Whiteleather to represent them in Riverside's Case.

Riverside's motion to consolidate and to continue is denied without prejudice. Riverside's request to continue the PHC to afford it additional time to serve its complaint and motion to consolidate on Parents was denied.

STUDENT'S MOTION TO CONTINUE

On January 23, 2024, Student filed a request to continue this matter to allow additional time to obtain the results of a privately funded visual processing assessment. Student does not know when this evaluation will be completed. Riverside did not oppose the request.

A due process hearing must be conducted, and a decision rendered, within 45 days of receipt of the due process notice, unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. OAH considers all relevant facts and circumstances in determining whether good cause exists to grant an extension. (See Cal. Rules of Court, rule 3.1332(d).)

Student failed to establish good cause for the requested continuance and Student's request is denied.

STUDENT'S MOTION TO QUASH SUBPOENA DUCES TECUM

On January 12, 2024, Riverside served Dr. Jenns Chang with a subpoena duces tecum directing the witness to produce numerous documents and to appear at hearing on February 8, 2024. On January 24, 2024, Student filed a motion to quash this subpoena duces tecum. Student generally contends Riverside failed to timely serve

Student with the Notice to Consumer and failed to establish reasonable necessity for the documents sought. On January 25, 2024, Riverside filed an opposition.

A party to a due process hearing under the Individuals with Disabilities Education Act has the right to present evidence and compel the attendance of witnesses in “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); see also Ed. Code, § 56505, subd. (e).) While subpoenas duces tecum are authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings. In special education proceedings in California, “[t]he hearing officer shall have the right to issue Subpoenas (order to appear and give testimony) and Subpoenas Duces Tecum (order to produce document(s) or paper(s) upon a showing of reasonable necessity by a party).” (Cal. Code Regs., tit. 5 § 3082, subd. (c)(2).) The requesting party must set forth sufficient detail, specific to the legal and factual issues to be adjudicated, that the requested records are reasonably necessary for the party to present a case or mount a defense. The reasonable necessity standard is a distinct, more stringent standard than the “good cause” standard governing standard discovery requests in civil litigation.

Code of Civil Procedure section 1985, subdivision (b), requires:

A copy of an affidavit shall be served with a subpoena duces tecum . . . , showing good cause for the production of the matters and things described in the subpoena, specifying the exact matters or things desired to be produced, setting forth in full detail the materiality thereof to the issues involved in the case, and stating that the witness has the desired matters or things in his or her possession or under his or her control.

The good cause requirement is met by a factual showing of why the requested documents or things are material and relevant to the litigated issues. (*Johnson v. Superior Court* (1968) 258 Cal. App.2d 829, 835-836; see also *Seven Up Bottling Company v. Superior Court* (1951) Cal. App.2d 71, 77.

California law requires that a Notice to Consumer be served on the subject of a subpoena for personal records not less than 10 days prior to the date for production of records plus the additional time required based on the method of service pursuant to Code of Civil Procedure section 1013. (Code Civ. Proc., § 1985.3, subd. (b).) The party issuing the subpoena must serve a Notice to Consumer on the party whose records are being sought at least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail. (Code Civ. Proc., § 1985.3, subd. (b)(3).) The proof of service of the notice to consumer must be served on the witness from whom documents are being sought. (Code Civ. Proc., § 1985.3, subd. (c)(2).)

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 motion to quash is granted. Riverside failed to serve Student with a Notice to Consumer at least five days prior to serving Dr. Chang with the subpoena duces tecum. Further, Riverside failed to establish reasonable necessity for its broad request for documents in light of Student's specific issues at hearing.

STUDENT'S REQUEST FOR AN IN-PERSON HEARING

In her January 23, 2024 prehearing conference statement, Student requested an in-person hearing. Student alleges that she will be denied due process if this hearing proceeds in a virtual format. Student generally asserts she will be prevented from confronting witnesses and verifying what information they are referencing during their testimony, and denied effective access to counsel during the hearing. Riverside opposed the motion.

The California Department of Education explicitly permits the use of a video or telephonic hearing in California Code of Regulations, title 5, section 3082, subdivision (g), which provides:

"Notwithstanding Government Code section 11440.30 of the [Administrative Procedure Act], 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."

The practice of conducting special education due process hearings by videoconference is consistent with the requirements of the Individuals With Disabilities Education Act, called IDEA, at 20 U.S.C. §§ 1400 et seq. The 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).) But, it does not regulate the procedures used at hearings. The IDEA requires only 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.

Student's argument that a virtual hearing denies her due process is not persuasive. The Sixth Amendment right to confront witnesses does not apply to civil or administrative proceedings. (*Perrtti v Nat'l Transp. Safety Bd. Fed. Aviation Admin.* (10th Cir. 1993) 999 F.2d 548.) All participants will be able to see and hear the witnesses through the electronic platform. The ALJ will advise each witness that they are precluded from referring to any document, electronic or paper, or communicating with anyone during their testimony, and are only authorized to view the electronic evidence bundles in the Case Center platform to which they are referred by an attorney or the ALJ. Student's counsel will be able to cross examine witness on their adherence to these requirements.

Attorneys and their clients may participate in an OAH conducted due process hearing from the same physical location. Should the parties choose to participate from separate locations utilizing the virtual format, OAH permits parties to communicate confidentially through separate videoconference breakout rooms. The parties and their attorneys may also communicate through other means such as email or text messaging during the hearing, so long as this is not disruptive of the hearing process. Further, nothing prevents the parties or counsel from requesting a break to contact each other and speak outside the presence of the ALJ and other parties. Such requests will be ruled on during the hearing.

Student failed to show that OAH's videoconference hearings violate the IDEA, California law, or any other related special education guidance or regulations. Student also failed to show that participating in a videoconference special education due process hearing would violate her right to due process. Therefore, Student's motion for an in-person due process hearing is denied.

Student anticipates filing a motion to amend. Riverside anticipates filing a new motion to consolidate. 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 language interpreter or reasonable accommodation.

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](https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings) 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

Special education hearings are closed to the public unless a student requests the hearing to be open to the public. At Student's request, the hearing is open to the public. By choosing an open hearing, Student is on notice that highly sensitive personal information will be seen and heard by observers.

Either party may forward their Zoom hearing invitations to observers. Observers will only be admitted to the hearing at the beginning of the hearing day and after the lunch break. Any prospective witness may not observe the hearing until their testimony is completed and with the ALJ's permission.

An ALJ may 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.) Government Code, section 11425.20 empowers the ALJ to 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.

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.

Theresa Ravandi

Theresa Ravandi

Administrative Law Judge

Office of Administrative Hearings