

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

IRVINE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2026041147

OAH CASE NUMBER 2026080762

ORDER FOLLOWING PREHEARING CONFERENCE FOR  
HEARING BY VIDEOCONFERENCE, GRANTING MOTION TO  
CONSOLIDATE AND CONTINUE, DESIGNATING  
STUDENT'S CASE AS PRIMARY CASE, GRANTING MOTION  
TO COMPEL OBSERVATIONS, AND MODIFYING  
STUDENT'S AUGUST 13, 2026, SUBPOENA DUCES TECUM  
TO DISTRICT CUSTODIAN OF RECORDS

AUGUST 24, 2026

On August 24, 2026, 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.

Attorneys Daniel Sahw and Lauren Martin appeared on behalf of Student. Law clerk Russell McFall attended. Attorney Megan Resnik appeared on behalf of Irvine Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## IRVINE'S MOTION TO CONSOLIDATE AND CONTINUE

On April 24, 2026, Student filed a request for due process hearing naming Irvine, in OAH case number 2026041147. On July 16, 2026, OAH granted Student's motion to amend. Student's Case is scheduled for hearing beginning September 1, 2026. Student's first amended complaint alleges denials of a free appropriate public education, called FAPE, during the 2025-2026 regular and extended school year because of Irvine's failure to appropriately assess Student. Student also raises several procedural and substantive challenges with Irvine's individual education program, called IEP, offers.

On August 19, 2026, Irvine filed a request for due process hearing naming Student. Irvine's Case is scheduled for hearing beginning September 15, 2026. Irvine seeks to defend its May 26, 2026, IEP as amended August 5, 2026. On August 19, 2026, Irvine filed a motion to consolidate Irvine's Case and Student's Case and proceed on the dates set for Irvine's Case.

Student opposed consolidation, requested additional time to submit a written opposition, and asked that the ALJ proceed with the PHC for Student's Case. The ALJ denied these requests but afforded both parties an opportunity to argue their positions.

Student argued Irvine's motion was untimely. Student contended Parents had generally consented to the May 2026 IEP and Irvine had filed its motion as a delay tactic. Student asked that if consolidation was granted that the matter proceed on the dates set for Student's Case. Irvine argued it timely filed its motion three days prior to the PHC, and had a right to defend the appropriateness of its entire IEP offer to which Parents had not fully consented. Irvine asked to maintain the hearing schedule set for Irvine's Case.

No statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases. However, OAH will generally consolidate matters that involve the same parties, a common question of law and/or fact, and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Both cases involve common questions of fact and law, namely whether Irvine's May 2026 IEP, as amended, offers Student a FAPE. As such, consolidation is warranted. Consolidation furthers the interests of judicial economy because both cases involve the same parties, and many of the same witnesses will be required to testify in each proceeding. Each matter will also involve the introduction of many of the same documents. Accordingly, consolidation is granted.

When consolidating cases, OAH designates the statutory timelines applicable to the consolidated matters to be controlled by one of the cases. Here, the statutory timeline shall be controlled by Student's Case, OAH case number 2026041147.

## CONTINUANCE

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).)

In light of this Order granting consolidation, there is good cause to continue this matter to the dates set in Irvine's Case, which will result in a short continuance of two weeks. The parties have not filed PHC statements that address Irvine's issue. Further, if the current schedule were maintained, evidence exchange would be due August 25, 2026. All dates set for Student's Case are vacated and continued. The consolidated matter matters shall now proceed on the dates set in Irvine's Case, OAH case number 2026080762. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in the primary case, OAH case number 2026041147.

## MODIFYING STUDENT'S SUBPOENA DUCES TECUM TO IRVINE'S CUSTODIAN OF RECORDS AND IRVINE'S WITHDRAWAL OF ITS MOTION TO QUASH

On August 13, 2026, Student issued a subpoena duces tecum to Irvine's custodian of records. On August 21, 2026, Irvine filed a motion to quash in part. Irvine generally opposed the subpoena duces tecum given its board scope. Student requested production of records by the first day hearing, which at the time the subpoena was issued, was September 1, 2026. The ALJ modified the date of production to September

15, 2026. Irvine did not object. Student further requested a slight modification to the records sought, to address Irvine's concern with the breadth of the request. The ALJ modified the first sentence of the first full paragraph in Student's Attachment to the subpoena duces tecum. Namely, the subpoena is modified to inset a comma after the phrase "through the present day." Next, the phrase "this includes but is not limited to" is replaced with the word "specifically." Given these modifications, Irvine withdrew its motion to quash.

## STUDENT'S MOTION TO COMPEL EXPERT OBSERVATIONS

On August 20, 2026, Student filed a motion to compel Irvine to permit Student's experts, who will be testifying at hearing, to observe Student in class. Student requested an expedited ruling on this motion. Student established good cause for the late filing.

Student just turned four years old. He is entering a transitional kindergarten program for the 2026-2027 school year. The end of May 2026, Student first asked Irvine to allow for his experts to conduct class observations. Student renewed his request on August 12, 2026. Irvine has been reluctant to schedule the requested observations, requiring Student to sign releases of information, and limiting observations only to experts who would be evaluating Student. Irvine, through counsel clarified at the PHC that Irvine was amenable to Student's experts observing Student in class so long as only one expert observed at a time and for no longer than one hour so as to minimize class disruption.

During the PHC, the parties narrowed the nature of the dispute regarding Student's request for expert observations. Irvine did not oppose Student's request for his occupational therapist expert, Gwen Olicker, to observe student in class for one hour.

This observation is scheduled for August 27, 2026. As such, there is no need to compel this observation.

Irvine did not oppose Student's request for his physical therapist expert, Pam Taylor, to observe Student in class for one hour. This is scheduled for August 25, 2026. However, Student had requested that Taylor be allowed to observe throughout the entire school day, a three-hour period. Irvine opposed the requested time length. It argued that a one-hour observation was in accordance with its policies and provided sufficient time with minimal disruption. Irvine argued that a longer observation would disrupt the classroom and student learning. Further, Irvine noted it must arrange for its administrator or designee to accompany the observer pursuant to District policy, and a commitment of longer than one hour was unduly burdensome.

Student argued his expert required additional time as Taylor was also conducting an independent evaluation of Student. Taylor requested a three-hour block to observe and assess Student's mobility, stamina, and access to his program throughout day. Taylor travels from Elk Grove and is scheduled to be in the Irvine area for the August 25, 2026, observation. If OAH granted Student's request for a longer evaluation time, Student asked that Irvine be required to fund Taylor's return travel costs.

Student's final request was that his orientation and mobility expert, Dr. Sonja Biggs, be allowed to observe him for an hour and a half on a Tuesday or Thursday. Biggs is located in Gilroy and has some health concerns restricting her ability to comfortably travel to Irvine. Biggs requested that one of her staff, Lindsay Kerr, who is a teacher for the visually impaired, conduct the observation in the classroom using technology that allowed Biggs to simultaneously observe remotely. Biggs and Kerr were familiar with and had successfully used this technology. Kerr will wear a camera that will

not audio or video record and will not take still photos. Rather, it allowed Biggs full access to hear and visually observe as Kerr directed the technology device.

Irvine's policy is to have one person observe at a time. Irvine opposed having two people observing at the same time, even if one was not physically present. This position was illogical. Irvine indicated it was willing to set up videoconferencing technology to allow Biggs to observe remotely. It was also willing to set up a separate observation time for Kerr in person but not with the technology that facilitated a two-person observation which was contrary to its policy. Kerr is visually impaired and has a guide dog. Kerr would not be able to independently observe Student visually. Kerr can direct the technology to allow Biggs to directly see what was happening. Student requested that Irvine grant Biggs' presence, assisted with the requested technology, as a reasonable accommodation for Kerr. Student asserted Irvine's offer to set up videoconferencing to conduct a remote observation was unlikely to allow sufficiently clear visual and auditory access. Student's expert requested the 90-minute block to allow sufficient time to observe Student during different activities, assess his mobility and orientation, safety, stamina, and access to his programming.

California law provides for a student's expert witness to observe the placement proposed for a student in preparation for a due process hearing. (*Benjamin G. v. Special Education Hearing Office* (2005) 131 Cal. App. 4th 875 (*Benjamin G.*); *L.M. v. Capistrano Unified Sch. Dist.* (9th Cir. 2008) 538 F.3d 1261.). Education Code section 56329, subdivisions (b) and (c), are essentially identical in their relevant parts and provide as to assessments at public or private expense that, "if [the public education agency's] assessment procedures make it permissible to have in-class observation of a pupil, an equivalent opportunity shall apply to an independent educational assessment of the pupil in the pupil's current educational placement and setting, and observation of an

educational placement and setting, if any, proposed by the public education agency, regardless of whether the independent educational assessment is initiated before or after the filing of a due process hearing proceeding.”

The court in *Benjamin G.* examined the legislative history of Education Code section 56329, subdivision (b) and held that the statute mandated an opportunity for student’s hired expert to observe the school district’s proposed placement prior to testifying at a due process hearing and regardless of whether the observation is technically a part of an independent educational evaluation. (*Benjamin G., supra*, 131, Cal.App.4th at pp. 883-884.)

Student’s request for Taylor to have three hours of observation time is reasonable given Student’s young age and numerous needs underlying his participation in many different related services pursuant to his IEP. Irvine has not demonstrated that a three-hour observation will unduly disrupt the class. Nothing prevents Irvine from having a staff member or service provider, as opposed to an administrator, accompany Taylor during the observation. Assuming Taylor completes the scheduled one-hour observation of Student on August 25, 2026, Irvine shall arrange another day for Taylor to complete an additional two-hour observation of Student for the second and third hours of his school day should she choose that slot. Irvine shall arrange for a two-hour observation for Taylor to occur as soon as possible and not later than the first day of hearing. If Taylor opted out of the one-hour observation set for August 25, 2026, then Irvine shall arrange for a three-hour observation as soon as possible and not later than the first day of hearing. Student’s request that Irvine fund Taylor’s travel costs is not reasonable and is denied.

Student’s request for Biggs and Kerr to complete a joint observation of Student for a 90-minute block is reasonable. Irvine did not raise any objection to the proposed

technology itself nor raise any concerns with Kerr and her guide dog being allowed access to observe Student. Rather, Irvine argued that having Kerr in the classroom with technology that allowed Biggs to directly observe remotely violated its policy of having only one observer present at a time. This argument was not persuasive. Biggs would not present any additional disruption to the class as she would not be present in the classroom.

Irvine's blanket policy of limiting all expert observations to one hour does not provide the equal opportunity envisioned by law. Irvine did not demonstrate that the requested 90-minute observation would negatively impact student learning. Given the use of assistive technology, the request for a 90-minute observation slot is reasonable. Irvine shall arrange a 90-minute observation period for Kerr and Biggs on a Tuesday or Thursday as soon as possible and not later than the first day of hearing.

## 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