

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ONTARIO-MONTCLAIR SCHOOL DISTRICT.

OAH CASE NUMBER 2026030348

ORDER FOLLOWING PREHEARING CONFERENCE FOR

HEARING BY VIDEOCONFERENCE

AUGUST 10, 2026

On August 7, 2026, Administrative Law Judge Laurie Gorsline, 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.

Parent appeared on behalf of Student. Attorney Cynthia Vargas appeared on behalf of Ontario-Montclair School District, which is referred to in this Order as District. Marcela Hernandez provided Spanish interpretation services. 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 August 18 through 20, 2026, 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 three 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

DISTRICT'S IMPROPER ATTEMPT TO ORALLY MOVE TO LIMIT THE ISSUES FOR HEARING

DISTRICT FAILED TO TIMELY MAKE A MOTION

During the PHC, District improperly attempted to have the ALJ limit the issues for hearing to the period between March 5, 2024 through May 25, 2024, without filing any written motion. District never filed a notice of insufficiency, a motion to dismiss or a motion to limit the issues for hearing. As such, Parent, who is now self-represented, never had proper notice that District intended to make any such motion to limit Student's claims, and there was no written motion properly before OAH for the ALJ to fully consider and rule upon at August 7, 2026 PHC.

OAH repeatedly ordered the parties to file all motions three business days before the PHC – in the March 9, 2026 Scheduling Order, the April 13, 2026 Order Following Prehearing Conference Granting Request for Continuance, and the May 8, 2026 Order Following Prehearing Conference Granting Continuance. In at least two of these orders, OAH stated the parties had to demonstrate good cause for failing to timely file any motion. District not only failed to file and serve any written motion, but it also failed to demonstrate any valid reason why it did not timely file its motion. Merely raising the statute of limitations as a defense in its response filed in March 2026 and dropping a one-line footnote in District's May 6, 2026 PHC Statement asserting that the statutory period is "March 5, 2024 through May 24, 2024," is not a motion nor notice of a motion.

APPLICATION OF THE STATUTE LIMITATIONS REQUIRES AN EVIDENTIARY HEARING

There is no summary judgment procedure in special education cases. OAH will, however, dismiss allegations and cases not within its jurisdiction. 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, or FAPE, to such child which sets forth an alleged violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the complaint, or in such time as State law allows. (20 U.S.C. §§ 1415(b)(6) & (f)(3)(C); 34 C.F.R. § 300.507(a); Ed. Code, §§ 56501, subd. (a), 56505, subd. (j).) OAH's jurisdiction is limited to these matters. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Under the IDEA, a parent or agency is required to file a request for due process hearing within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint or if the State has an explicit time limitation for requesting such a hearing under this part [20 U.S.C. §§ 1411 et seq.], in such time as the State law allows. (20 U.S.C. §§ 1415(b)(6)(B) & (f)(3)(C); 34 C.F.R. § 300.507(a)(2).)

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (j); see also 20 U.S.C. §§ 1415(b)(6) & (f)(3)(C); 34 C.F.R. § 300.507(a)(2).) In California, a request for due process hearing is required to be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (Ed. Code, § 56505, subd. (j).) In other words, the statute of limitations begins to run when a party is aware of the facts

that would support a legal claim, not when a party learns that he has a legal claim. (See *El Pollo Loco, Inc. v. Hashim* (9th Cir. 2003) 316 F.3d 1016, 1039.)

Accordingly, to the extent Student's claims regarding the October 12, 2023 IEP in Issue 1 below were filed more than two years from the date Parent knew or had reason to know of the facts underlying the basis of the claims in Issue 1, they are time-barred and outside OAH's jurisdiction. (See 20 U.S.C. §§ 1415(b)(6) & (f)(3)(D); Ed. Code, § 56505, subd. (j).) However, determination of the timeliness of Parent's claim in Issue 1 depends on when Parent knew or should have known of the alleged action that forms the basis the claim triggering the statute of limitations period to begin. In other words, the deadline for the filing of any claim in Issue 1 was two years from the date Parent discovered the underlying facts for the claim, as opposed to when the conduct at issue occurred. (*Avila v. Spokane School District 81* (9th Cir. 2017) 852 F.3d 936, 944 [the legislative history suggests that Congress intended to adopt the discovery rule, not the occurrence rule].) Significantly, Student does not plead that either of the enumerated statutory exceptions to the statute of limitations applies to Student's claims regarding the October 12, 2023 IEP. (See 20 U.S.C. § 1415(f)(3)(D); Ed. Code, § 56505, subd. (j).)

Thus, contrary to District's arguments, application of the statute of limitations requires evidentiary hearing. The law makes clear that when a parent knew or should have known of the facts underlying the basis of the complaint for purposes of triggering the statute of limitations is a highly factual determination. (E.g., *J.L. ex rel. J.L. v. Ambridge Area School District* (W.D.Pa. 2008) 622 F.Supp.2d 257, 266, citing 71 Fed. Reg. § 46540-01 at 46706 (August 14, 2006)[hearing officers are required to make determinations, on a case-by-case basis, of factors affecting whether the parent "knew or should have known" about the action that is the basis of the complaint].) These factual determinations cannot be made at a PHC. Among other things, the ALJ does not

even know when Parent received the October 12, 2023 individualized education program, or IEP. Further, District offered no basis for its assertion in its PHC statement that the statutory period started on March 5, 2024 and ended May 25, 2024, as opposed to starting March 4, 2024, and ending on some other specific date. Accordingly, District's request to limit the issues is denied.

THE PARTIES ARE ORDERED TO MEET AND CONFER REGARDING THE SNAPSHOTS AND PERIOD AT ISSUE

Nonetheless, the ALJ has again reviewed the complaint and the PHC statement filed by Student's former counsel. It appears that Student is challenging both the October 12, 2023 IEP and the March 7, 2024 IEP offers of special education and related services. It also appears Student has asserted he was denied FAPE during the 2023-2024 school year because the IEPs at issue occurred during that school year. And, not because the District's conduct only caused a FAPE denial through the end of the 2023-2024 school year which did not carry over to the next school year. However, the complaint and the PHC statement drafted by Parent's former attorney are not a model of clarity and Parent offered no assistance in clarifying the issues during the PHC.

The ALJ is required to apply the "snapshot rule," for any IEP offers being challenged. (*J.W. v. Fresno* (9th Cir. 2010) 626 F.3d 431, 439; *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149, citing *Fuhrmann v. East Hanover Board of Education* (3d Cir. 1993) 993 F.2d 1031, 1041[whether a student was offered or denied a FAPE is determined by looking to what was reasonable at the time the IEP was developed, not in hindsight].) As such, the ALJ requires further clarification regarding Student's issues, including the snapshot at issue, the scope of Student's claim for purposes of the remedy sought, and whether the statute of limitations is really an issue in this case.

Accordingly, as part of the meet and confer the ALJ ordered at the PHC addressed below, the parties are also ordered to meet and confer by August 13, 2026, at 4:00 PM, regarding the following additional specific topics below and be prepared to discuss them on the first day of hearing:

- Is Student challenging the October 12, 2023 IEP offer of special education services at the time it was made? or
- Is Student only challenging the offer made in the October 12, 2023 IEP as amended by the March 7, 2024 IEP? and
- Does Student claim he was denied a FAPE during the 2023-2024 school year because the IEPs he is challenging were developed during that school year, or is Student claiming that District's conduct only caused a FAPE denial through the end of the 2023-2024 school year, but did not carry over to the next school year?

Unless otherwise ordered, the issues at the due process hearing and proposed resolutions are set forth below. The parties shall promptly file written objections if the issues stated in this Order do not accurately reflect Student's claims or any issue is missing. Any objections will be addressed on the first day of hearing. The ALJ may request further clarification of the issues on the first day of hearing.

ISSUES

1. Did District deny Student a FAPE in the October 12, 2023 IEP by:
 - A. Failing to offer goals to appropriately address Student's needs in:
 - i. reading, including decoding, fluency, and comprehension?
 - ii. listening comprehension?

- iii. auditory processing?
 - iv. writing, including spelling, written language, sentence and essay composition?
 - v. math?
 - vi. executive functioning, including attention, task initiation, working memory, task completion, organization/planning, and problem solving?
 - vii. expressive language?
 - viii. using assistive technology?
 - B. Failing to offer services to appropriately address Student's needs in:
 - i. reading, including decoding, fluency, and comprehension?
 - ii. listening comprehension?
 - iii. auditory processing?
 - iv. writing, including spelling, written language, sentence and essay composition?
 - v. math?
 - vi. executive functioning, including attention, task initiation, working memory, task completion, organization/planning, and problem solving?
 - vii. expressive language?
 - viii. using assistive technology?
 - C. Failing to offer an appropriate placement?
2. Did District deny Student a FAPE in the October 12, 2023 IEP as amended in the March 7, 2024 IEP by:
- A. Failing to offer goals to appropriately address Student's needs in:
 - i. reading, including decoding, fluency, and comprehension?

- ii. listening comprehension?
- iii. auditory processing?
- iv. writing, including spelling, written language, sentence and essay composition?
- v. math?
- vi. executive functioning, including attention, task initiation, working memory, task completion, organization/planning, and problem solving?
- vii. expressive language?
- viii. using assistive technology?

B. Failing to offer services to appropriately address Student's needs in:

- i. reading, including decoding, fluency, and comprehension?
- ii. listening comprehension?
- iii. auditory processing?
- iv. writing, including spelling, written language, sentence and essay composition?
- v. math?
- vi. executive functioning, including attention, task initiation, working memory, task completion, organization/planning, and problem solving?
- vii. expressive language?
- viii. using assistive technology?

C. Failing to offer an appropriate placement?

- 3. Did District deny Student a FAPE by failing to assess Student in all areas of suspected disability during the 2023-2024 school year, specifically, failing to propose an audiology assessment to rule out a central auditory

processing disorder and determine whether Student would benefit from audiological support?

PROPOSED RESOLUTIONS

The resolutions requested by Student include a finding that District denied Student a FAPE based on the alleged violations in the issues and an order for compensatory education and reimbursement according to proof.

District filed its response to Student's complaint on March 18, 2026. (*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.

At the PHC, District agreed to also email Parent a copy of its exhibits it uploads into Case Center.

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. District 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 District'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.

At the PHC, Parent indicated she had already uploaded Student's exhibits. However, Parent did not follow the instructions made at the PHC. Among other things, Parent uploaded the cover pages as separate documents instead of making it the first page of each document.

At the PHC, Parent was ordered to reupload her exhibits into Case Center such that they comply with OAH's instructions, including ensuring that each document uploaded as an exhibit has the appropriate cover page with a letter and number as its first page. Parent is not required to remove any exhibits she already uploaded into Case Center, but can just upload the exhibits at the end of those she has already uploaded.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails may be consolidated into one exhibit if they are part of a single chain of messages, unless the email has attachments in which case each email with attachments shall be one separate exhibit. Any document which had an attachment or enclosure may also be consolidated into one single exhibit even if the attachment or enclosure is also a separate exhibit.

Exhibits should be in chronological order with the oldest document first.

Parties should include resumes or curriculum vitae for each witness expected to testify as an expert.

District's exhibits must include a copy of the school calendar for each school year in question, including if they exist, calendars for all extended school years.

For any assessment plans, the parties shall include all signatures pages, if any, demonstrating when the assessment plan was sent, and if, and when Parent signed the assessment plan and returned it to District.

For any IEPs, the parties shall include all signatures pages, if any, demonstrating who attended each IEP team meeting, and if, and when, Parent consented to or refused to consent to each IEP or part thereof.

For all exhibits which District has both the English and Spanish translation, District shall upload both as part of their exhibits, each version as a separate exhibit. For all exhibits which are forms or completed forms, District shall upload both the English and Spanish version of the form, if any exist, even if the form is not completed.

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.

At the PHC, Parent did not identify any new witnesses beyond what those identified in Student's PHC Statement. Parent shall notify District's counsel in writing no later than five business days before the hearing if she plans to call any other witnesses to testify.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants who have not previously used the [Zoom application](#), may find informative instructions by visiting, Getting Started with Zoom at <https://support.zoom.us/hc/en-us/categories/200101697>.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by video conference 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 video conference 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 to call 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 present such evidence.

The parties are ordered to meet and confer no later than August 13, 2026, at 4:00 PM to discuss scheduling witnesses and how much time each witness will take to testify. District's attorney shall initiate the phone call to Parent. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, any subpoenas, and any recordings which are proposed exhibits. The parties shall identify duplicate exhibits in the parties' hearing exhibits and decide which one of the duplicates both parties will use at hearing. The parties shall discuss the statute of limitations defense raised by District and which IEP(s) and periods are at issue as ordered above. 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, District shall inform Student which proposed witnesses on Student's list are District employees. District shall also identify the witnesses on Student's list that require a subpoena. District may agree to accept service for a witness under its control or provide Student with the witness's most recent contact information. These obligations are reciprocal. To the extent applicable, Student is required to do the same regarding the witnesses on District's list and provide the witness's most recent contact information.

Any contact information provided to the opposing party shall be used for the limited purpose of issuing subpoenas or for contacting a witness to attend the hearing. Any contact information provided to the opposing party shall not be disclosed to any other person.

PARTICIPANT INFORMATION FORM

Parent has not filed a Participant Information Form. Parent shall file such form with OAH by August 14, 2026.

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.

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 District, except as otherwise ordered below.

At the PHC, the ALJ stated the parties would be required to present all evidence regarding the statute of limitations regarding Issue 1 before any other evidence was presented. Upon further reflection, the ALJ is vacating that order. Given that the hearing is estimated to be completed within three days and given that Parent is self-represented, not an attorney, and requires an interpreter/translator, the ALJ has concluded that separating the proof in this way will only delay the hearing and create confusion. Moreover, evidence regarding the October 12, 2023 IEP is part of the proof that will be required for Issue 2.

Instead, Parent will present all her witnesses first on all issues, followed by District's witnesses on all issues except as otherwise ordered below. Parent will testify first. For all witnesses which both parties are calling to testify besides Parent, District will examine each of these joint witnesses first on all issues, and then Parent will examine those joint witnesses on all issues.

At the PHC, the District objected to the ALJ's order which required it to conduct its examination of the joint witnesses first and asked that its initial examination of the joint witnesses be limited to just foundational matters. The ALJ instructed District to be brief in making its objections due to time constraints. The PHC was only scheduled for two hours, and the PHC took two and one-half hours to complete. After the ALJ listened to District's objections and ended any further argument, District requested the

opportunity to be heard further. The ALJ denied the request and ordered that any further objections be made in writing and filed on August 10, 2026.

At this point, to the extent District still objects to the ALJ's order requiring it to conduct its examination first for the witnesses both parties are calling, District's objections are overruled. After further reflection, the ALJ also denies District's request to limit its initial examination of joint witnesses to only foundational issues. Education Code section 56505, subdivision (e) lists the rights of the parties, but those rights do not include the order in which the witnesses will appear to testify at hearing or bifurcating their testimony. The ALJ has discretion to control the order of proof and length of time for the hearing, which necessarily can affect the order of witnesses, the hearing schedule and the interrogation of the witnesses. (Evid. Code § 320 [the court in its discretion shall regulate the order of proof]; Ed. Code, § 56505, subd. (h); see also, Code Civ. Proc., § 128 [every court shall have the power to provide for the orderly conduct of the proceedings]; Fed. Rules Evid., rule 611, 28 U.S.C. [the court controls the mode and order of examining witnesses and presenting evidence]; Evid. Code, § 765 [the court controls the interrogation].)

The ALJ finds that because Parent is not an attorney and is a self-represented non-native English speaker, requiring District to first do its examination of the witnesses both parties are calling, will promote judicial economy because it will make for a more efficient hearing. Requiring District to do its examinations first is not novel and, in fact, is typical, in many OAH hearings. This is certainly not the first time such an order has been made in a due process proceeding, and such practice is routine in fair hearings before OAH. (See, e.g., Welf. & Inst. Code, § 4712, subd. (j) [a regional center or state-operated facility shall present its witnesses and all other evidence before the claimant presents the claimant's case unless the parties agree otherwise or the hearing officer

determines that it is appropriate for a witness to be heard out of order].) Contrary to District's assertion made at the PHC, the ALJ is not changing the burden of proof. (*Ibid.* [requiring a respondent to present its case first before the claimant presents his case does not alter the burden of proof].) Student shall continue to have the burden of proof on all Issues.

The ALJ finds that requiring District to do its examinations of the joint witnesses first will shorten the hearing and make for a more efficient hearing, which has already been continued twice. This order of proof is congruent with the IDEA policy of prompt and efficient resolution of special education disputes. As Senator Harrison A. Williams, Jr., the champion of the Act, stated in the final Senate debate on the legislation:

I cannot emphasize enough that delay in resolving matters regarding the education program of a handicapped child is extremely detrimental to his development.... Thus, in light of the urgent need for prompt resolution of questions involving the education of handicapped children, it is expected that all hearings and reviews conducted pursuant to these provisions will be commenced and disposed of as quickly as practicably consistent with a fair consideration of the issues involved.

(121 Cong. Rec. 37,416 (1975), quoted in *Livingston School Dist. Numbers 4 and 1 v. Keenan* (9th Cir. 1996) 82 F.3d 912, 916-917, relying on *Department of Education v. Carl D.* (9th Cir.1983) 695 F.2d 1154, 1157.)

WITNESS SCHEDULE

On the first day of hearing, the parties must provide a joint proposed witness schedule for the entire hearing to the ALJ after meeting and conferring with each other. District is responsible for preparing the joint schedule and filing it with OAH and

uploading it into Case Center. The schedule should include the first and last name of each witness, which parties are calling each witness to testify, and include dates and time estimates of each witness's expected testimony on an hour-by-hour basis, with breaks in the testimony factored into the schedule. In the event an agreement cannot be reached regarding the schedule, each party shall prepare a separate written schedule. Both parties must have witnesses available in case there is no agreement on the schedule.

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 unless otherwise ordered. 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 the ALJ goes 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.

The parties' requests to make an audio recording of the hearing are granted. The parties shall be allowed to make an audio recording of the hearing subject to the above conditions and any other orders made at hearing. The parties are prohibited from using artificial intelligence to either record the hearing or transcribe the recording. Smart glasses are prohibited.

VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

There are no recordings which are 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

A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

District's counsel stated she intended to make a motion regarding clarification of the ALJ's order to limit its initial examination of any joint witnesses to foundational matters.

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 video conference 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. Smart glasses are prohibited.

District's counsel is forewarned that the type of behavior that was exhibited at various points in the PHC will not be permitted during the hearing. Regarding objections, it is within the ALJ's sole discretion whether to permit oral argument and length of that oral argument. To the extent the ALJ allows oral argument regarding an objection, once the ALJ states that no further oral argument will be permitted, the parties shall abide by that order and shall not continue to argue or make other improper verbal outbursts. Any party or attorney that fails to comply or otherwise interferes with the orderly conduct of the hearing may be subject to sanctions.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Parent requires a Spanish language interpreter. OAH will provide the interpreter.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning [requests for reasonable accommodation](#) is available on OAH's website at: <https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings>.

HEARING CLOSED TO THE PUBLIC

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

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting [OAH Secure e-file](https://www.applications.dgs.ca.gov/oah/oahsftweb) 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.

Laurie Gorsline

Laurie Gorsline

Administrative Law Judge

Office of Administrative Hearings