BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

V.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025080840

ORDER DENYING MOTION TO DISMISS FOR FAILURE TO PARTICIPATE IN A RESOLUTION SESSION; ORDER CONTINUING THE PREHEARING CONFERENCE AND DUE PROCESS HEARING AND ORDERING PARTICIPATION IN A RESOLUTION SESSION WITHIN 15 DAYS OF THIS ORDER; AND ORDER PARTIALLY GRANTING AND DENYING MATTERS OUTSIDE OF OAH'S JURISDICTION

OCTOBER 1, 2025

On August 18, 2025, Student filed a due process hearing request with the Office of Administrative Hearings, called OAH, naming San Diego Unified School District, called San Diego.

On September 18, 2025, San Diego filed a motion to dismiss for Parent's failure to participate in a mandatory resolution session and to dismiss issues one, two, five, six, seven, eight, nine, eleven and twelve based on OAH's lack of jurisdiction.

SAN DIEGO'S MOTION TO DISMISS FOR FAILURE TO PARTICIPATE IN A RESOLUTION SESSION IS DENIED

San Diego detailed numerous attempts in its motion to obtain parental participation in a resolution session. For example, Jessica Coleman, Program Specialist in the Due Process Hearings and Mediation Department for the San Diego, first emailed Parent on August 22, 2025, to schedule a resolution session and proposed a resolution session date of September 2, 2025. On August 25, 2025, when Parent had not responded regarding the proposed September 2, 2025, resolution date, Coleman proposed August 28, 2025, and September 4, 2025, as additional dates. On August 26, 2025, at 8:58 PM, Parent responded to Coleman that Parent was available on August 28, 2025, only between noon and 3:00 PM for the resolution session. By then, San Diego no longer had the August 28, 2025, date available because of other scheduled matters. Nonetheless, Coleman responded immediately to Parent with an early morning email on August 27, 2025. Coleman informed Parent that San Diego was no longer available on August 28, 2025, but that Coleman was available to meet with Parent that morning, meet on September 2 or 4, 2025, and could offer more dates to accommodate Parent. Parent repeatedly responded requesting only August 28, 2025 for the resolution session, the date Coleman had already informed Parent San Diego was unavailable. San Diego detailed subsequent correspondence and phone calls in its many attempts to schedule a

resolution session with Parent including offering five date options on September 2, 2025. Parent did not respond to San Diego's September 2, 2025, requests regarding her availability for resolution session dates.

On September 23, 2025, Student filed an opposition to the motion to dismiss. Student argued San Diego failed in its duty to engage in good faith attempts to schedule resolution. Student also argued OAH wrongly deemed his complaint filed on August 18, 2025, because the earlier filed August 13, 2025, complaint did not include a proof of service. Student argued the dismissal would deny Student due process and that if OAH considered dismissal, OAH only dismiss those matters outside of its jurisdiction. Student did not dispute San Diego's representation of its attempts to schedule a resolution session and did not offer dates available to San Diego's last inquiry of Parent's availability to participate in a resolution session on September 2, 2025.

A local educational agency is required to meet with the parents and Student's relevant Individualized Education Program team members within 15 days of receiving Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006). The meeting, called a resolution session, can be waived in writing by both parties or if they agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not attend the resolution session, and it was not waived, there is no due process hearing until the resolution session waived or held. (34 C.F.R. § 300.510(b)(3).) The respondent can request the case be dismissed after the 30-day period, if it documented reasonable efforts to hold the resolution session and the parents did not attend. (34 C.F.R. §300.510(b)(4).)

The purpose of the resolution session is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint,

so that the local educational agency has the opportunity to resolve the dispute that is the basis for the due process complaint. (34 C.F.R. § 300.510(a)(2).)

Student is required to participate in a resolution session before a due process hearing may commence. There was no written agreement to waive the resolution session or proceed to mediation in lieu of the resolution session. San Diego made reasonable and timely efforts to obtain parental participation in a resolution session many times as detailed in its motion and supporting declaration before filing its motion to dismiss. San Diego filed this motion to dismiss on the 30th day of the date OAH deemed the complaint filed.

San Diego's motion to dismiss Student's complaint based on the Parent's failure to participate in a resolution session is supported, but OAH is exercising its discretion to give Student another opportunity to participate in a resolution session. Therefore, San Diego's motion to dismiss based on failure to participate in a resolution session is denied.

OAH CONTINUES THE PREHEARING CONFERENCE AND DUE PROCESS HEARING AND ORDERS PARTICIPATION IN A RESOLUTION SESSION WITHIN 15 DAYS OF THIS ORDER

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. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain

essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (Ed. Code, § 56505, subd. (f)(3); Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including:

- the proximity of the hearing date;
- previous continuances or delays;
- the length of continuance requested;
- the availability of other means to address the problem giving rise to the request;
- prejudice to a party or witness as a result of a continuance;
- the impact of granting a continuance on other pending hearings;
- whether trial counsel is engaged in another trial;
- whether the parties have stipulated to a continuance;
- whether the interests of justice are served by the continuance or imposing conditions on the continuance; and any other relevant fact or circumstance.

(Cal. Rules of Court, rule 3.1332(d).)

OAH found good cause to continue the hearing because the parties did not participate in a resolution session and the hearing cannot proceed. Instead of dismissing the matter, OAH is giving the self-represented Parent an opportunity to participate in a resolution session within 15 days of this Order and continues the prehearing conference, called a PHC, and the due process hearing as follows:

PREHEARING CONFERENCE will be held on October 27, 2025, at 10:00 AM.

DUE PROCESS HEARING will be held on November 13, 2025.

The hearing shall begin at 9:30 AM on all days unless otherwise ordered. The hearing shall continue day to day, as needed at the discretion of the Administrative Law Judge, called an ALJ. PHC statements and motions are due to OAH no later than three business days before the PHC or with a showing of good cause why it was not timely filed.

OAH orders the parties to participate in a resolution session withing 15 calendar days of this Order, unless waived by the parties. If the parties do not participate in a resolution session within 15 days of this Order or waive the resolution session, OAH will consider a dismissal of this matter.

SAN DIEGO'S MOTION TO DISMISS ISSUES ONE, TWO, FIVE, SIX, SEVEN, EIGHT, NINE, ELEVEN AND TWELVE IS GRANTED AND DENIED IN PARTS

San Diego also requests dismissal of issues outside of OAH's jurisdiction under issues one, two, five, six, seven, eight, nine, eleven and twelve.

Student opposed San Diego's motion to dismiss in its entirety because he alleged all issues under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), called the IDEA. Student argued he intended OAH to determine FAPE denials only and referenced other laws and statutes as background information.

Specifically, Student alleged both in the issues and paragraphs under the issues violations of the IDEA, Section 504 of the Rehabilitation Act of 1973, called Section 504, the Americans with Disabilities Act, called ADA, the McKinney-Vento Homeless Assistance Act, called McKinney-Vento, the Family Educational Rights and Privacy Act, called FERPA, and retaliations and discriminations by San Diego under other non-IDEA state and civil rights laws. Student's issues in the complaint are as follows:

1. Violation of IDEA Stay-Put and McKinney-Vento Protections Through Unlawful Removal and SDUSD Police Involvement.

2. Confidentiality Breach and Retaliatory Disclosure of Protected Information.

5. McKinney-Vento Violations – Improper Verification Demands, Breach of Stability/Dispute Protections, and Discriminatory Stereotyping.
6. Predetermination of Complaints and Discriminatory Retaliation by SDUSD's Office of Investigations, Compliance & Accountability.
7. Systemic Predetermination and Retaliation by SDUSD Across Departments.
8. Hostile Environment and Cumulative Retaliation Denying FAPE.
9. Failure to Provide Procedural Safeguards and Prior Written Notice.
11. Retaliation Against Protected Activity (Section 504/ADA/IDEA).
12. Denial of Access to Specialized International Baccalaureate Placement and Creation of a District-Wide Hostile Environment.

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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 [FAPE] to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH is an agency of limited jurisdiction and does not have jurisdiction to determine claims under Section 504, the ADA, state and civil rights laws including tort claims of retaliation and discrimination or decide if certain conduct was retaliatory or discriminatory.

San Diego proved that violations under Section 504, the ADA, state and civil rights law and allegations of retaliations and discrimination against Student are outside of OAH's jurisdiction; so, San Diego's motion to dismiss allegations in the complaint under those violations are granted. Accordingly, Student's issues and claims in the complaint that he was entitled to relief under violations of Section 504, the ADA, state and civil rights law and San Diego's alleged retaliations and discrimination against Student are dismissed.

However, San Diego did not prove the allegations in the complaint under McKinney-Vento and FERPA are entirely unrelated to FAPE denials and outside of OAH's jurisdiction. Therefore, San Diego's motion to dismiss allegations in the complaint under McKinney-Vento are denied without prejudice. Although OAH does not have jurisdiction to determine Student's eligibility claims under McKinney-Vento, OAH has jurisdiction to decide if San Diego denied Student a FAPE because his was homeless under McKinney-Vento and thus entitled to special education and related services. Similarly, OAH has jurisdiction to decide FAPE denials based on failure to produce documents under FERPA. Therefore, San Diego's motion to dismiss all allegations under McKinney-Vento and FERPA are denied, without prejudice, subject to further discussion of the FAPE issues at the PHC, with the ALJ.

SAN DIEGO'S MOTION TO DISMISS ISSUE ONE OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504 and state and civil rights laws of issue one is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims under McKinney Vento and stay put is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE TWO OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, state and civil rights laws and retaliatory disclosure or conduct by San Diego of issue two is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims regrading privacy under FERPA is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE FIVE OF THE COMPLAINT IS DENIED.

San Diego's motion to dismiss issue five of Student's allegations and claims under McKinney-Vento is denied without prejudice subject to further discussion and clarification of the issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE SIX OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, state and civil rights laws and retaliation and discrimination by San Diego of issue six is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims of predetermination and references to McKinney-Vento and FERPA is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE SEVEN OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, the ADA, state and civil rights laws and retaliation by San Diego of issue seven is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims of predetermination and references to McKinney Vento is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE EIGHT OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, the ADA, state and civil rights laws and retaliation by San Diego of issue eight is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims of predetermination and references to McKinney Vento is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE NINE OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, the ADA, state and civil rights laws and retaliation by San Diego of issue nine is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims of prior written notice and references to McKinney Vento is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE ELEVEN OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, the ADA, state and civil rights laws and retaliation by San Diego of issue eleven is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims of assessment with references to McKinney Vento is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

SAN DIEGO'S MOTION TO DISMISS ISSUE TWELVE OF THE COMPLAINT IS PARTIALLY GRANTED AND PARTIALLY DENIED.

San Diego's motion to dismiss Student's allegations and claims under Section 504, the ADA, state and civil rights laws and retaliation by San Diego of issue twelve is granted and dismissed. San Diego's motion to dismiss Student's allegations and claims references to McKinney Vento is denied without prejudice subject to further discussion and clarification of the FAPE issues at the PHC.

In preparation for the PHC, Student shall set forth clearly and specifically in the PHC statement each issue of FAPE denial he intends OAH to determine at hearing consistent with the ruling in this Order.

ORDER

1. San Diego's motion to dismiss based on failure to participate in a resolution session is denied.
2. The parties are ordered to hold or waive a resolution session within 15 calendar days of the date of this Order.
3. OAH continues the PHC to October 27, 2025, at 10:00 AM, and the due process hearing to November 13, 2025, at 9:30 AM.
4. San Diego's motion to dismiss Student's issues and claims for relief in the complaint under violations of Section 504, the ADA, state and civil rights law and San Diego's alleged retaliations and discrimination against Student are granted as to issues one, two, five, six, seven, eight, nine, eleven and twelve.

5. San Diego's motion to dismiss Student's issues and claims for relief in the complaint under McKinney-Vento and FERPA violations are denied without prejudice.

IT IS SO ORDERED

Sabrina Kong

Sabrina Kong
Administrative Law Judge
Office of Administrative Hearings