BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

SANGER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025050678

OAH CASE NUMBER 2025041063

ORDER FOLLOWING PREHEARING CONFERENCE AND PARTIALLY GRANTING MOTION TO QUASH

AUGUST 19, 2025

On August 18, 2025, Administrative Law Judge Penelope Pahl, 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 Shaw and Brian Elliott-Perkrul appeared on behalf of Student. Attorney Summer Vicknair appeared on behalf of Sanger Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on August 26, 27, and 28, 2025. After the scheduled dates, the hearing shall continue day to day, as needed, Mondays and Fridays included, 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 Additional hearing dates, if needed 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

Pursuant to discussions with the parties during the Prehearing Conference, the ALJ has clarified the statement of some issues and re-ordered the issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist*. (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified Sch. Dist*. (9th Cir. 2002) 291 F.3d 1086, 1090. No change in substance has been made.

ISSUES:

Pursuant to the parties' stipulation that Sanger will present its issues first in this consolidated case, Sanger's issues are listed first.

SANGER'S ISSUE:

1. Did Sanger's February 6, 2025, IEP as amended on February 27, March 10, 26, and 28, 2025, offer Student a free appropriate public education, or FAPE, such that Sanger may implement this IEP, absent Parents' consent, if Parents seek an education for Student from Sanger?

STUDENT'S ISSUE:

2. Did Sanger deny Student FAPE, during the 2024-2025 school year, including extended school year, by:
    a. failing to assess student in the areas of behavior and mental health
    b. predetermining placement;
    c. failing to offer placement in the least restrictive environment; and
    d. failing to offer an assessment plan subsequent to Sanger's initial IEP team meeting in response to District's concern about behavior?

The parties are responsible for carefully reviewing the issues as stated in this prehearing conference order. These will be the hearing issues. A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing, prior to the first day of hearing, preferably by the Friday prior to the first day of hearing, stating its concern and referring to supporting portions of the complaint.

PROPOSED RESOLUTIONS

The resolutions requested by Student include a declaration that Student prevails on all issues, and order of prospective relief and compensatory education according to proof.

Sanger filed its response to Student's complaint on June 6, 2025. (34 C.F.R. § 300.508(e)(1).)

SANGER'S MOTION TO QUASH SUBPOENA DUCES TECUM

On August 7, 2025, Student served a subpoena duces tecum on the custodian of records for Sanger. Pursuant to the Addendum to the subpoena, Student sought copies of communications, defined as writings, emails, or correspondence held by District, by any Sanger employee or representative, relating to Student from August 24, 2025 through "the present day" which is interpreted as the date of the Subpoena, August 7, 2025. The topics of the communications were limited to assessments, placement assessment plans, or IEP development.

Student's subpoena Addendum asserted that the requested materials "are reasonably necessary for Student to present evidence on the issues raised in his complaint." On August 14, 2025, Sanger filed a motion to quash Student's subpoena duces tecum directed to the custodian of records for Sanger Unified School District.

Sanger opposed the motion on the grounds that there is no discovery in special education matters, Student failed to state a reasonable necessity for the documents, the request was overbroad with no established relevancy to the issues and was unreasonably burdensome, and "communications" are not subject to student records production under Education Code section 56504.

Student's counsel offered his opposition to the motion during the prehearing conference. Student asserted that the statement the documents were reasonably necessary to prove the issues in the complaint met the requirement of a statement of reasonable necessity. Student argued prehearing discovery was not being requested, as production was requested for the first date of hearing. Student also contends that the communications were adequately defined so the request was not vague or ambiguous. Finally, Student argued that the request was not burdensome because the subpoenas only sought documents from the beginning of the 2024-2025 school year.

NO PREHEARING DISCOVERY IN SPECIAL EDUCATION CASES

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act, or IDEA. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "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).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery. The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).) While subpoenas duces tecum are

authorized in special education hearings, their use must be consistent with the legislative and regulatory framework of these proceedings.

SUBPOENAS DUCES TECUM IN SPECIAL EDUCATION CASES

In special education proceedings in California, the ALJ has the right to issue Subpoenas ordering witnesses to appear and give testimony. ALJs also have the right to issue Subpoenas Duces Tecum to produce documents upon a showing of reasonable necessity by a party. (Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).)

Special education law does not specifically address motions to quash 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.

Here, Student sought documents to be produced to the ALJ through the usual OAH procedures which require a witness to upload the documents to Case Center. Documents uploaded to Case Center are not available to counsel until the ALJ hearing the case has reviewed the documents and determined they should be released to the subpoenaing party. Student did not seek impermissible pre-hearing discovery.

STATEMENT OF NECESSITY

Student's statement of necessity is more problematic. Sanger asserts that Student failed to complete the Statement of Necessity and failed to state how the documents sought were material and necessary to his case. The Declaration of Necessity form is signed and dated, but is not completed. No facts are stated describing the materiality of the documents sought to the issues pled. While Student

asserts that he mentioned the Addendum, it is not mentioned on the Statement of necessity. It is referenced on the Subpoena itself, as it lists the documents sought.

The addendum does not include an oath. Nor is it signed or dated. In this instance, the Statement of Necessity is deemed to reference the addendum. In the future, Student should not presume that an incomplete Statement of Necessity will be deemed to include an attachment without specific reference thereto.

The substance of the statement of necessary is minimal. 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. (See, *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.) Student's statement that the documents "are reasonably necessary for Student to present evidence on the issues raised in his complaint," is conclusory at best.

Sanger also argues the subpoena is overbroad, unreasonably burdensome, and seeks documents that do not fall within the definition of educational records. Student is not required to subpoena records that fall within the definition of educational records. Those records should be produced in their entirety upon request. (Ed. Code § 56504; 34 C.F.R. § 300.501(a).)

As stated, the subpoena is overbroad, and could be interpreted as being overly burdensome based on the description. This is not a civil court request for production of documents.

SUBPOENA MODIFICATION

The undersigned exercises her discretion to modify the subpoena. The statement of necessity will be accorded the benefit of the doubt as to the description of necessity for the documents. The motion to quash is granted in part and modified as follows:

Sanger shall produce emails or any other written correspondence, dated between the first day of the 2024-2025 school year and the date of the filing of the complaint, which was May 16, 2025, which relates to assessments, placement assessment plans or IEP development. The emails to be produced are limited to those exchanged among members of Student's IEP teams for the IEPs or IEP amendments dated February 6, 2025, February 27, 2025, March 10, 2025, March 26, 2025, and March 28, 2025. The emails or correspondence shall also include those exchanged among the IEP team members and the Principal or Vice Principal of the school Student attended or who supervised any Home Hospital program in which Student was enrolled, and any of Student's teachers or assessors who were not IEP team members. This order does not include emails or correspondence that includes Sanger counsel. These documents shall be uploaded to Case Center no later than Monday August 25, 2025 at 3:00 PM. Sanger may choose to exchange the documents directly with Student should the parties so stipulate.

EXHIBITS

Exhibits must be uploaded electronically to Case Center according to the Order Setting Procedures for Filing Exhibits Electronically which was attached to the Scheduling Order in this case. This order gives detailed instructions for naming and identifying exhibits.

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 regarding exhibit uploads, please contact OAH at OAHSEOps@dgs.ca.gov. It is not necessary to file exhibits or witness schedules with OAH if they have been uploaded 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) and this order, 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, for example, S-1, S-2, etc. Sanger must use the letter D before the number to identify Sanger exhibits, for example, D-1, D-2 etc. 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 with all of its pages. Different 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 uploaded into Case Center in chronological order.

Parties should include resumes or curriculum vitae for each witness who will testify to their professional credentials. Sanger's exhibits must include a color copy of the school calendar for each school year in question.

Electronic copies of exhibits must be uploaded to Case Center by 5:00 PM at least five business days before the first day of hearing. 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 disclose witnesses they intend to call to each other in compliance with Education Code section 56505. Witness lists may be uploaded to Case Center in the Witness Schedule section. The joint witness schedule will also be uploaded to this section. No party shall be permitted to call any witnesses not timely disclosed, unless good cause is shown both for the necessity of the witness, and for the reason the witness was not disclosed before the disclosure deadline, in a written and sworn declaration under penalty of perjury. Permission to present a witness who was not disclosed by the deadline is 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 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. More information about this in in the "Audio Only or Telephonic Testimony" section later in this order.

The parties are responsible for making sure their own witnesses attend the hearing, 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.

The ALJ has discretion to limit the number of witnesses, and the time allowed for testimony. Education Code, section 56505.1, subdivision (h), gives the ALJ authority 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.

Parties will be expected to be prepared for hearing. Parties will be expected to prepare questions they need to ask witnesses before the hearing begins. Parties are allowed to ask witnesses questions about documents, events relevant to the issues being decided, and about their opinions if a witness' opinions are relevant to the case.

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, or does not help the judge to understand a parties' arguments. The judge may also refuse to hear evidence if the evidence is too time consuming to justify the time it would take to hear, compared to the value of the information it will provide to the judge.

The parties are ordered to meet and confer no later than Thursday August 21, 2025, at 3:00 PM. The parties shall discuss how many witnesses each side will most likely call and how many of those witnesses are on both sides' witness lists. The parties

shall discuss scheduling witnesses and an estimate of how much time each side will need to question a witness. The parties shall discuss any concerns related to a witness' inability to appear by videoconference for hearing, use the electronic evidence program Case Center, or the need for witness subpoenas, if any. The parties should attempt to eliminate duplicate exhibits. The parties are encouraged to determine whether they can agree to written stipulations as to facts, contentions, resolutions and the authenticity of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Sanger will inform Student whether witnesses Student wishes to call are current Sanger employees. Each side will inform the other whether witnesses under their control must be subpoenaed instead of just given notice to attend the hearing on a certain date and time.

Cooperation in providing access to witnesses is expected. However, ultimately, the parties are responsible for making sure their witnesses attend the hearing, unless otherwise ordered by the ALJ. A party's failure to properly notify or subpoena a witness is not an excuse justifying additional hearing time, or a delay in the hearing.

PARTICIPANT INFORMATION FORM

Both parties must ensure OAH has current contact information for all hearing participants and witnesses, including email addresses and telephone numbers. Updated Participant Information forms are required if a party or witness' contact information is not current. Updated forms must be filed two business days before the hearing starts.

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 consolidated case, each party bears the burden of proof as to the issues the party pled. Per the parties' stipulation during prehearing conference, Sanger's case shall be presented first, followed by Student's unless otherwise ordered.

WITNESS SCHEDULES

The parties must provide a proposed joint witness schedule to the ALJ on the first day of hearing. The schedule should include: the first and last name of all witnesses, the parties believe will be called; the witnesses' title; which party is calling the witness to testify; the date the witness will testify; and the hours each witness is expected to testify.

It is expected that the parties will cooperate to develop the joint witness schedule. In the rare event this is not possible, each party shall prepare a separate written schedule. In this Student-filed case, Student must have witnesses available to start the case.

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

parties must schedule their witnesses to avoid delays in the hearing. 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, unless needed for rebuttal purposes. All parties must ask the witness all necessary questions 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

"Audio only" means participating in the hearing using a computer without video. Neither side anticipated that a witness would be unable to appear on camera during the videoconferenced hearing. Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. 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 who cannot access exhibits electronically must inform the ALJ prior to the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

Both parties requested permission to make an audio recording of the hearing for the attorney's personal notetaking purposes. Permission to make an audio recording is

subject to the ALJ's discretion. Both parties' requests to make an audio recording of the hearing are granted subject to the following conditions:

1. The OAH recording is the only official recording;
2. No programs employing artificial intelligence are to be used to record the hearing;
3. The parties shall turn their recording device off at the same time that the ALJ is off the record to avoid recording conversations while off the record;
4. Problems with the party's recording mechanism will not be allowed to delay the hearing;
5. A party's recording may not be given, provided or played to a witness, or potential witness; and the recording shall not be shared with any non-party, possible witness, or posted online;
6. Participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.
7. All internal comment and chat features of Zoom have been disabled for purposes of the hearing. Use of any of these features is prohibited and shall not be part of the official record.

VIDEO RECORDING

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

RECORDINGS AS EXHIBITS

Neither side anticipates uploading a video or audio recording as an exhibit. Recordings may not be uploaded electronically without the ALJ's permission. However, they must still be exchanged in a timely manner. The ALJ may grant or deny the request

or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

Neither side contemplates additional prehearing motions, and no motions are pending. 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 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 in 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 of the parties requested an interpreter. Nor did any of the parties anticipate a need for disability accommodations.

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 a student requests the hearing to be open to the public. (Ed. Code § 56501, subd. (c)(2).)

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.

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.

Penelope Pahl

Penelope S. Pahl
Administrative Law Judge
Office of Administrative Hearings