BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

GUARDIAN ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2025020895

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE; ORDER REQUIRING GUARDIAN TO ESTABLISH STANDING; ORDER DENYING STUDENT'S MOTION TO AMEND COMPLAINT

MAY 5, 2025

On May 2, 2025, Administrative Law Judge Jennifer Kelly, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Jennifer J. Kropke appeared on behalf of Student. Attorney Maria E. Gless appeared on behalf of Palm Springs Unified School District, called Palm Springs.

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 May 13, 14, and 15, 2025 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 five days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

ISSUES AND PROPOSED RESOLUTIONS

A free appropriate public education is called FAPE. An individualized education program is called IEP.

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are:

ISSUES

1. Did Palm Springs deny Student a FAPE during the 2022-2023 school year, beginning February 26, 2023, by:
    a. failing to provide a legally compliant prior written notice in response to Guardian's requests for assessments in auditory processing and vision therapy;
    b. failing to assess Student for auditory processing disorder;
    c. failing to provide a prior written notice in response to Guardian's request for in-person vision therapy;
    d. changing Student's vision therapy services from in-person to virtual without Guardian's consent; and
    e. failing to provide a legally compliant prior written notice in response to Guardian's objections to Palm Spring's offer of related services in occupational therapy, speech and language, and vision therapy in a June 5, 2023, IEP?
2. Did Palm Springs deny Student a FAPE during the 2022-2023 school year, beginning February 26, 2023, in the IEPs developed on May 4, May 17, and June 5, 2023, by:

a. failing to offer adequate goals in occupational therapy, speech and language, specialized academic instruction, and individual transition planning;
b. failing to offer adequate services to support Student's needs in speech and language, occupational therapy, specialized academic instruction, and individual transition planning;
c. failing to offer vision therapy services;
d. failing to offer scientifically research-based interventions in speech and language;
e. failing to offer speech and language and occupational therapy services in a March 12, 2023, IEP;
f. failing to offer an appropriate placement in the least restrictive environment in a May 4, 2023, IEP by offering a functional life skills program rather than a mild-to-moderate program; and
g. predetermining the offer of related services in vision?

3. Did Palm Springs deny Student a FAPE during the 2023-2024 school year in the IEPs developed on September 8, October 25, November 27, December 4 and 11, 2023, and March 12, and April 29, 2024, by:
    a. failing to offer appropriately ambitious transition goals;
    b. failing to offer adequate services in speech and language, occupational therapy, vision therapy, educationally related mental health, individual transition planning, and full-time, one-to-one aide support;
    c. failing to offer speech and language and occupational therapy services in a March 12, 2024, IEP; and

d. failing to offer scientifically research-based interventions in speech and language?

4. Did Palm Spring deny Student a FAPE during the 2023-2024 school year by failing to materially implement Student's related services in occupational therapy and speech and language?
5. Did Palm Springs deny Student a FAPE during the 2024-2025 school year in the IEPs developed on October 31, November 13, November 22, and December 10, 2024, and January 21 and February 5, 2025, by:
    a. failing to offer appropriately ambitious goals in speech and language, occupational therapy, specialized academic instruction, vision therapy, assistive technology, and individual transition planning;
    b. failing to offer adequate services in speech and language, occupational therapy, specialized academic instruction, assistive technology, and individual transition planning; and
    c. failing to invite representatives of transition planning agencies to attend the January 21 and February 5, 2025, IEP team meetings?
6. Did Palm Spring deny Student a FAPE during the 2024-2025 school year by:
    a. excluding Guardian from speaking with Student at the December 10, 2024, IEP team meeting about Student's desire not to receive related services;
    b. encouraging Student to tell Guardian Student did not want to receive related services at the December 10, 2024, IEP team meeting;

c. unreasonably delaying review of independent vision therapy and assistive technology assessments funded by Guardian;
d. failing to timely convene an IEP team meeting to review independent educational evaluations in psychoeducation, speech and language, and occupational therapy; and
e. failing to assess Student in assistive technology and auditory processing following Guardian's requests?

7. Did Palm Spring deny Student a FAPE during the 2024-2025 school year by failing to materially implement Student's related services in occupational therapy and speech and language?

PROPOSED RESOLUTIONS:

The resolutions requested by Student include compensatory education in vison therapy, speech and language, occupational therapy, and specialized academic instruction; reimbursement of educationally related expenses incurred by Guardian on Student's behalf; and staff training in transition planning and procedural and substantive IDEA requirements.

Palm Springs filed its response to Student's complaint on March 7, 2025. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with

Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Palm Springs must use the letter D before the number to identify Palm Spring's exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Palm Spring's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

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

Palm Spring's exhibits must include a copy of the school calendar for each school year in question.

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.

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

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without video. A witness's inability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order.

The ALJ has discretion to limit the number of witnesses and the time allowed for testimony. Education Code section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than May 9, 2025, at 5:00 PM to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Palm Springs shall inform Student which proposed witnesses are Palm Springs' employees. Palm Springs shall also identify the

witnesses on Student's list that require a subpoena. Palm Springs may agree to accept service for a witness under Palm Spring's control or provide Student with the witness's most recent contact information.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information on the Participant Information Form filed with OAH and shall file an updated Form as necessary. The Participant Information Form is not served upon the opposing party. The ongoing obligation to ensure that the Participant Information Form filed with OAH is current does not change the parties' statutory obligation to timely disclose their witnesses to the other party at least five business days prior to hearing. The parties must file an updated Participant Information Form to inform OAH of any changes, additions, or deletions, including the required information no later than 5:00 PM at least two business days before the first day of hearing.

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

EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case, Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Palm Springs, unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference is a matter within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Any party seeking to present a witness by audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a

witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;
2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and Palm Spring's requests to make an audio recording of the hearing are granted.

VIDEO RECORDING

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

RECORDINGS AS EXHIBITS

Recordings may not be uploaded electronically without the ALJ's permission. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording 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.

GUARDIAN'S STANDING

The complaint alleges that Student lives with his biological father and Guardian. The complaint does not allege that Guardian holds Student's educational rights. At the PHC, Palm Springs' attorney contended Guardian does not hold Student's educational rights. Guardian's attorney advised the ALJ that Guardian is in the process of obtaining a conservatorship over Student, but did not answer directly whether Guardian holds educational rights for Student.

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) OAH's jurisdiction is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

The IDEA expressly allows a student's parent to request a due process hearing about the student's identification, evaluation, or placement, or the school district's provision of FAPE to the student. (34 C.F.R. § 300.507(a)(1).) The IDEA and California Education Code define "parent" to include, among others:

- a guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child;
- or an individual acting in the place of a biological or adoptive parent, including a grandparent, with whom the child lives.

(34 C.F.R. § 300.507(a)(1); Ed. Code, § 56028, subd. (a)(1), (3)-(4).) If a judicial decree or order identifies a specific person to act as the parent of a child to make educational

decisions on the child's behalf, then that person will be the child's parent for purposes of the IDEA. (34 C.F.R. § 300.30(b)(2); Ed Code, § 56028, subd. (a)(2).)

At the start of the due process hearing, Guardian shall be prepared to establish she has the legal right, also called standing, to bring this matter on behalf of Student. Guardian must establish she has the authority to act in the place of Student's biological parent, or has obtained a judicial decree identifying her as Student's parent for purposes of the IDEA. (34 C.F.R. §§ 300.30(a); 300.30(b)(2).) In the event Guardian cannot establish she has standing to bring this matter on Student's behalf, the due process hearing shall not proceed.

DENIAL OF STUDENT'S MOTION TO AMEND

On April 29, 2025, Student filed a motion to amend the complaint and an amended complaint. On May 1, 2025, Palm Springs filed an opposition to Student's motion.

The motion to amend was filed more than five days prior to the due process hearing, and states Student seeks to amend the complaint to add issues and resolutions. However, the amended complaint contains the same issues as the original complaint, with very minor changes.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

Student's amended complaint withdraws various allegations, including allegations relating to an interim IEP. A party's withdrawal of a claim is not a basis to amend a complaint and restart the applicable timelines. A party may move to withdraw their claims during the due process proceeding without the need to amend the complaint.

Student seeks to amend the complaint to, among other things, allege procedural violations relating to Palm Spring's stay put obligation during the statutory period. Stay put requires that students remain in the current educational placement pending the resolution of an educational dispute. (34 C.F.R. § 300.518(a).) The stay-put provision only applies when the Guardian files an IDEA due process complaint. Informal complaints about the student's identification, evaluation, placement or services will not trigger stay-put protections. (*Clarfeld v. Department of Educ.* (D.Hawai'i January 15, 2021) 2021 WL 144222, affd. (9th Cir. 2022) 2022 WL 822118, cert. den. (Oct. 3, 2022) 143 S.Ct. 171 (holding that a guardian of a 14-year-old boy with autism could not invoke stay-put protection for the period before he filed his due process complaint).) Student's amended complaint contains no allegations relating to a proposed change to Student's educational placement pending the current due process dispute. Rather, Student alleges that during the statutory period prior to the due process filing, Palm Springs offered a reduction in Student's related services minutes. These allegations are alleged in the original complaint, and the amended complaint does not add any substantive changes to these claims.

Student also contends he added a new claim for a failure to assess in auditory processing disorder. However, this claim was alleged in Issue 2 in the original complaint.

In summary, although the motion is timely, Student does not explain what changes are made to the amended complaint and appears to have made no substantive changes. Granting a motion to amend is not automatic and is within OAH's discretion. Accordingly, the motion to amend is denied.

Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested an accommodation or a language 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 OPEN TO THE PUBLIC

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

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if

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

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the PHC. 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.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings