BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015090053 ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE, AND GRANTING STUDENT'S MOTION TO CONTINUE EXPEDITED HEARING

On September 14, 2015, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Sarah Garcia, Attorney at Law, appeared on behalf of Sacramento City Unified School District. She was assisted by Jennifer Baldassari, Attorney at Law. Richard Ruderman, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The expedited hearing in this matter was set to commence on September 16, 2015. Student filed a motion to continue the hearing to September 22, 2015, because counsel was not retained until September 10, 2015. Further, counsel is still awaiting Student's school records which were requested the same day, and will need additional time after receipt to prepare for hearing. District did not oppose the request for continuance, so long as the case was set to begin no later than January 22, 2015. Good cause was shown for the continuance, and the motion was granted. The expedited hearing shall be held on September 22, 23, and 24, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ.[1] The hearing shall begin each day at 9:00 a.m., and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered.

[1] September 24, 2015, is the first day of hearing concerning the non-expedited issues in this District-filed case. That date shall remain on calendar until it is vacated, either because Student's motion to consolidate this case with the one he recently filed is granted, or because there is a separate request for continuance filed by one or both parties.

The attorney for District shall notify OAH no later than close of business on September 15, 2015, as to whether the hearing can take place at District's offices. If the hearing cannot occur at District's offices, it will be held at OAH, 2349 Gateway Oaks Drive, Suite 200, Sacramento, California, 95833. OAH will send notice of the location of the hearing to the parties once the location has been ascertained.

If the hearing is held at District's offices, District understands that at a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. District shall ensure that all parties and the ALJ have drinking water, and that tissue is available on the witness table during the hearing. District shall ensure that the facility for the hearing fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issue. The issue at the expedited due process hearing is:

Is Northern California Preparatory Academy an appropriate interim alternative educational setting for placement of Student, such that District can remove him from his current placement at John F. Kennedy High School for not more than 45 days, because maintaining Student's current placement is substantially likely to result in injury to Student or others?

3. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing, with each exhibit separated from the next by a divider. It is suggested, but not ordered, that the parties use different colored binders for ease of use by witnesses when testifying. The parties shall use numbers to identify exhibits and place the letter "S" or "D" in front of each exhibit number, to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be consecutively numbered or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. In accordance with Education Code section 56505, subdivision (e)(7), the parties shall serve the evidence binders on each other five business days prior to the commencement of the hearing, unless the parties agree to a shorter time for exchange of the binders. Neither party is precluded from introducing into evidence exhibits from the other's evidence binder.

At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing.

Inclusion of an exhibit in an exhibit binder, or presentation of an exhibit to the other side according to the agreed upon timeline, does not guarantee the admission of an exhibit. The ALJ shall determine whether the exhibit is relevant and admissible. Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence unless the ALJ rules that it is admissible. Parties must be prepared to provide an explanation as to why a document or other evidence was not provided to the other party sooner, and why it should now be admitted. [2]

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Student shall provide District with three business days' notice if a school employee is to be called as a witness by Student. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer by September 17, 2015, as to the schedule of witnesses. The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Neither party shall be permitted to call any witnesses not disclosed within statutory guidelines except for good cause shown.

5. Scope of Witness Examination. If a witness is to be called by more than one party, the second party questioning the witness may expand cross-examination to include questions that might have been asked on direct examination had the party called the witness first. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

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[2] Student's attorney made a request to District for Student's records pursuant to Education Code section 56504, on September 10, 2015. As of the date of the PHC, those records had not been received by the attorney, and are not due to him until September 17, 2015. For this reason, Student will be given some leeway about introducing documents or calling witnesses not disclosed within the five business day time period.

6. Telephonic Testimony. Whether a witness may appear by telephone 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 telephone shall move in advance for leave to do so. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear questions, objections, and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled. Student indicated that Paula Solomon may need to testify telephonically and asked that she be allowed to do so. District did not object. Ms. Solomon may testify telephonically so long as the above conditions are met. No other witnesses are expected to testify telephonically.

7. Motions. As previously noted, Student's motion to continue the hearing to September 22, 2015, was granted. Student has also filed his own request for due process with OAH on or about September 14, 2015, and asked that Student's case be consolidated with this case filed by District. District indicated that it may wish to oppose this request, and is ordered to file its opposition no later than close of business on September 15, 2015. OAH shall then rule on the motion to consolidate. The parties understand that **consolidation will not delay the start of this hearing** on September 22, 2015.

District and Student are to meet and confer as to how certain evidence contained on a DVD is to be transmitted from District's attorney to Student's attorney. If the parties cannot agree as to how District can provide this evidence to Student's attorney, the parties may schedule a further PHC by contacting OAH. Any other motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of September 14, 2015.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off during the hearing unless permission to the contrary is obtained from the ALJ.

10. Audio Recording of the Hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. The parties may record the hearing if they wish. However, the parties are advised that OAH always makes a digital recording of the proceedings, and this recording is the official record of the hearing. Parties who record the hearing are to turn off their recorders whenever the ALJ orders that the

hearing is "off the record." Parties will not be given time during the hearing to deal with any malfunction of their recording equipment. Any violation of this order to turn off recorders when the matter goes off the record will result in the revocation of permission to record the hearing. No video recording is allowed.

11. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

12. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services. OAH shall be notified immediately if such a need should arise.

A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in the hearing, may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is known. Information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Open/Closed To the Public. The hearing shall be closed to the public.

14. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER NOON OF THE BUSINESS 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. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received 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 the evening prior to the hearing or the morning of the hearing.

15. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: September 15, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings