BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LOMPOC UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021030255

ORDER FOLLOWING PREHEARING CONFERENCE, CONTINUING HEARING AND SETTING ORAL ARGUMENT

MARCH 15, 2021

Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings, held a prehearing conference by videoconference on March 15, 2021. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorneys Andrea Marcus and Dan Robinson appeared on Student's behalf. Attorney Sarah Garcia appeared on behalf of Lompoc Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

ISSUES

The legal issues that will be addressed are those as identified on page 14 of the February 19, 2021 District Court Order remanding to OAH:

1. Did Student establish that she had an Individuals with Disabilities Education Act, called IDEA, qualifying disability as of November 19, 2019?
2. If Student established that she had an IDEA-qualifying disability as of November 19, 2019, does Student require residential placement to meet her educational needs?

The remand order does not specify that OAH shall determine any proposed resolutions on remand. Accordingly, OAH will not consider any proposed resolutions as part of briefing or oral argument.

BRIEFING SCHEDULE AND ORAL ARGUMENT

1. This matter will be decided based upon the administrative record in OAH Case No. 2019060655, pleadings, and supplemental documents not included in the administrative record, if any, that the parties submitted to the District Court in Case number 2:20-cv-00765-RGK-JPR, that pertain to the specific issues and time frame on remand. The ALJ will also consider briefs submitted by the parties, and oral argument. OAH will not hold a hearing or take new evidence, other than as listed in this Order.
2. The due process hearing is continued to April 9, 2021, as stated in Paragraph 5 regarding oral argument.
3. The parties shall electronically upload documents consistent with this Order before close of business on March 19, 2021.

4. Both parties shall file and serve an opening brief, consisting of not more than 15 pages total, on or before 4:00 p.m. March 30, 2021.
5. The ALJ will take oral argument by videoconference from the parties at April 9, 2021, at 10:00 AM (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Each party shall have no more than 30 minutes for oral argument. No rebuttal argument will be allowed. Lompoc Unified's argument shall be first, followed by Student. Oral argument will be recorded.
6. If either party fails to appear for oral argument as scheduled by this Order, the ALJ will hear oral argument from the party that appears.
7. The record on remand will close on April 9, 2021, at the close of oral argument, unless otherwise ordered.

EXHIBITS

The parties shall upload their documents, as defined by this Order, electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Briefs shall be filed with OAH and served as in the normal course of business. The parties shall comply with Education Code section 56505 subdivision (e)7), as modified by this Order, by serving their documents defined above on each other on or before 5:00 PM on March 19, 2021. The parties shall not upload any part of the administrative record in OAH Case No. 2019060655, which is available to the ALJ.

Timely uploading of electronic hearing exhibits on or before March 19, 2021, shall constitute that party's timely exchange of evidence on the other party in compliance with Education Code section 56505, subdivision (e)(7). Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged as required by this Order shall not be considered by the ALJ, unless otherwise ordered.

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

No witness will be heard during oral argument. The ALJ will not consider any declarations by previous witnesses at hearing that were not part of the administrative record or presented to the District Court.

MEET AND CONFER

The parties are ordered to meet and confer before the date of exchange to ensure that the parties do not upload duplicate documents. Each document uploaded must consist of one document. Separate documents may not be combined into one exhibit.

The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and authenticity and admissibility of documents.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information for the attorneys and party representatives 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 date for oral argument.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the oral argument. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. The conditions are:

1. the OAH recording is the only official recording;
2. participants shall not use Teams to record the hearing;
3. 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;
4. operation of the party's recording mechanism will not be allowed to delay the hearing;
5. a parties' recording may not be given, provided or played to a witness, or potential witness; and
6. the recording is subject to the same confidentiality as the due process hearing;
7. use of the chat function in the videoconference is prohibited and shall not be part of the official record;

8. participants shall not take screenshots of the videoconference or share or publish any portion of the videoconference or audio recording.

Both parties may record oral argument subject to these conditions.

VIDEO RECORDING

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

MOTIONS

No prehearing motions are pending or contemplated. 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 COUNSEL AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Counsel and all parties must always conduct themselves in a professional and courteous manner. Cellular phones, telephones and computer notifications must be shut off or set to silent during oral argument unless the ALJ grants permission otherwise. Counsel and parties 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.

REASONABLE ACCOMMODATIONS

A party or participant in this case requiring reasonable accommodation to participate in a 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/Accommodations-at-OAH.

ORAL ARGUMENT CLOSED TO THE PUBLIC

Any evidence submitted pursuant to this Order, and any oral argument, shall be unavailable and closed to the public.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled oral argument. In addition, if a settlement is reached within five days of the scheduled start of the oral argument, 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 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 oral argument, 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.

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 considering briefing and oral argument on remand and may not be relied upon by the parties. The parties should be aware that the ALJ has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings