

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH
SCHOOL DISTRICT .

OAH CASE NO. 2013080664

ORDER FOLLOWING PREHEARING
CONFERENCE FOR EXPEDITED
HEARING

On September 9, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH) to prepare for the expedited hearing portion of this case. Attorney Daniel Shaw appeared on behalf of Student and Parents (Student). Attorney Heather Edwards appeared on behalf of the Roseville Joint Union High School District (District). The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Expedited Hearing Dates and Times: The hearing dates for the expedited hearing are confirmed. The hearing shall take place on September 17, 18, 19, and 23, 2013, for a total of four days of hearing. The hearing shall begin at 9:30 a.m. on September 17, and 23, 2013, and at 9:00 a.m. on all other days. The parties are directed to complete the hearing by close of business on September 23, 2013, or establish good cause why further hearing time is necessary.

2. Change of Venue: In Student's prehearing conference statement filed prior to the PHC, Student moved to change the venue for the hearing from District's offices at either 1750 Cirby Way, or 2501 Woodcreek Oaks Blvd., Roseville, to the Sacramento office of OAH. During the PHC, Student cited both confidentiality and neutrality concerns. District orally opposed the motion based on the Roseville location of most witnesses for both parties. Student was persuasive that the Challenge High School location at Woodcreek Oaks Blvd. preferred by District would not ensure the confidentiality of this closed hearing. District offered to hold the hearing at its Professional Center building located at 1750 Chelsea Way, Roseville. The venue for the hearing was therefore ordered changed to the Professional Center location away from District offices and classroom activities.¹

¹ 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.

3. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall use good faith efforts to make witnesses under its control reasonably available to the other party without need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

4. Issues: The issues for the expedited hearing are limited to those alleged in Student's request for due process (complaint). The issues were discussed during the PHC, and are reframed and clarified below.²

Was District's determination that Student's conduct on May 2, 2013, was not a manifestation of his disability in compliance with the law, as follows:

Issue 1: Was Student's conduct a manifestation of his disability because the conduct was caused by, or had a direct and substantial relationship to his disability?³

Issue 2: Did District commit a procedural violation by not considering all required relevant information in connection with the manifestation determination review meeting and only considering his eligibility disability as listed in his IEP?

5. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs and accompanied by a detailed exhibit list. Student's **exhibit list** shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's **exhibit list** shall identify each exhibit by number along with a "D" (e.g., D1).⁴ Any document over five pages in length

The District shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing.

² The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues have been reframed and clarified for consistency with the applicable law but have not been substantively changed or amended.

³ During the PHC, Student confirmed that the second substantive prong of applicable the manifestation determination test, whether his conduct was the direct result of a failure to implement his individualized education program (IEP), was not at issue in this proceeding.

shall be internally paginated. Each exhibit binder shall contain a detailed table of contents or list. During the PHC the parties stipulated to extend the statutory disclosure deadline, and based on that stipulation, each party shall serve an exhibit binder containing its respective exhibits and list on the other party by close of business on Thursday, September 12, 2013.⁵

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible.

6. Witnesses: Prior to the hearing, the parties shall informally meet and confer to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. 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. Each party shall manage the number of witnesses so that the party's evidence will be presented within its approximate allocation of 50 percent of the total hearing time.

The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

At the present time, Student intends to call the following witnesses from his PHC statement list: Dr. Randal Ball (expert); Robin Patricia Fennel (expert); Student; Mother; Daniel Certucci (friend); Dan Miller (police officer); Karen Lane (resource teacher); Brad Pasham (school principal); Jon Coleman (vice-principal); Daniel Garcia (campus security

⁴ Student represented that his exhibits have already been organized using the alphabet instead of numbers. Student is not required to renumber them and may keep the letters in this case. However, in future cases, particularly with voluminous documents, his counsel should use numbers instead, as discussed during the PHC. However, only the exhibit lists are required to contain each party's designation of "S" or "D," not the separating tabs.

⁵ Education Code section 56505, subdivision (e)(7). The parties agree that this deadline is by close of business on Tuesday, September 10, 2013.

guard); Erin Granucci (biology teacher); Jeff Clark (counselor); Angela Sanchez (school psychologist); Miguel Quinonez (algebra teacher); and Shelly Davis (school psychologist).

At the present time, District intends to call the following witnesses from its PHC statement list: (a) witnesses listed by Student above: Student, Mother, Karen Lane, Jon Coleman, Daniel Garcia, Erin Granucci, Jeff Clark, and Angela Sanchez; and (b) the following additional witnesses: Judy Daniels (assistant principal); Steve Williams (student services director); and Craig Garabedian (special education director).

7. Telephonic Testimony: Whether a witness may appear by telephone is a matter within the discretion of the ALJ, on specified terms and conditions. (Cal. Code Regs., tit. 5 § 3082, subd. (g).) Student moved to present the testimony of Dr. Ball by telephone because he is located in San Luis Obispo and Parents are not able to afford to pay his transportation costs for 12 hours of round trip travel for the hearing. District objected to the motion based on its right to confront and cross-examine the witness. Weighing the equities, Student's motion was granted provided he produces Dr. Ball's resume or curriculum vitae to District with his evidence binder, and provides the witness with complete copies of all exhibits of both parties prior to his testimony. District shall provide a speaker telephone with adjustable volume control and a long cord in the hearing room capable of ensuring that the witness is heard and recorded by OAH.

8. Order of Presentation of Evidence and Scope of Examination: Student bears the burden of proof in this proceeding and shall produce his evidence first. Where Student and District intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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 unless otherwise ordered.

9. Closed Hearing: Consistent with Student's request, the hearing shall be closed to the public.

10. Motions: 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 this PHC.

11. Special Needs and Accommodations: No special accommodations were requested during the PHC or ordered.

12. 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 electronic devices shall be turned off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. During the PHC, Student requested permission to record the hearing. District did not object provided it may also record the hearing. Both parties are granted permission to privately

record the hearing provided they ensure the recordings are turned off every time the ALJ goes off the record. Further, the parties may not cite their recordings in any closing arguments as OAH is responsible for the office record of the hearing. The ALJ reserves the right to revoke this permission in the event of problems including impermissible recording of confidential conversations.

13. 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. Any party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

14. Settlement: The parties are encouraged to negotiate 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880**.

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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT **(916) 274-6035**, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

If a settlement agreement has been executed but is subject to approval of a school board, the parties may file a motion for OAH to vacate the hearing dates and set a telephonic status conference for a date following board approval. OAH will check for messages the evening prior to the hearing and the morning of the hearing.

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

Dated: September 11, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings