

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT; JOURNEY CHARTER
SCHOOL.

OAH CASE NO. 2014060007

ORDER FOLLOWING EXPEDITED
PREHEARING CONFERENCE OF
JUNE 16, 2014

On June 16, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Student's mother appeared on behalf of herself and Student (Student). Student's father also appeared during the PHC. Ernest L. Bell, Attorney at Law, appeared on behalf of the Capistrano Unified School District and the Journey Charter School (collectively referred to as "the district"). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on June 24 and 25, 2014 and July 1, 2014, at the offices of the Capistrano Unified School District located at 33122 Valle Road, San Juan Capistrano, California 92675. The hearing shall continue thereafter day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. each day of the hearing unless otherwise ordered. ALJ Paul Kamoroff is currently assigned as the judge to hear the expedited portion of this case.

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.

The district shall ensure that an appropriate room is available for the hearing, with separate counsel tables facing the ALJ's table and a separate table for the witness. The district shall also ensure that some type of water is available for all hearing participants, including the witnesses.

2. Expedited Hearing Issues:

a. Did the district fail to conduct a manifestation determination for all impacted days when Student was suspended in excess of 10 days in a school year?

b. Did the district fail to provide instruction for Student during his days of suspension in excess of ten days as required by law?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Both parties shall use numbers to identify their exhibits, but the district shall mark its exhibits as “D” exhibits (“D-1,” “D-2” etc.) and Student shall mark Student’s exhibits as “S” exhibits. Each exhibit shall be internally paginated by exhibit, or all of a party’s exhibits shall be consecutively paginated, for example by bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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 shall not serve exhibits on OAH prior to the hearing, but instead shall bring the exhibit binder(s) for the ALJ to the first day of hearing. In the event of duplicate exhibits, the most legible version will be used.

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 at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

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. The district has agreed to make current district employees available to testify at the hearing in Student’s case-in-chief without need for subpoena.

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.

5. Scope of Witness Examination. 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.

6. Telephonic Testimony. The district has requested that two witnesses, Linda Cox and Alyson Smith, testify telephonically. Testimony by telephone is within the discretion of the ALJ. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) The district’s request is granted. If the district chooses to call either of those witnesses to testify telephonically, the district shall provide the proposed witness(es) 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 objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Motions. No pretrial motions are pending or contemplated. Student had previously brought a motion to consolidate this case with a prior case filed by the district, but that motion was denied by ALJ Pasewark during the hearing of that district-filed case.

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 all Parties 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 or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. There is to be no audio or video recording of any type during the hearing without the permission of the ALJ hearing the case.

10. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

11. Hearing Closed To the Public. The hearing will be closed to the public.

12. 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 4:00 P.M. ON 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. 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.

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

IT IS SO ORDERED.

DATE: June 16, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings