

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GONZALES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014120198

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 12, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Jennifer Whipple appeared on Student's behalf. Attorney Sarah Garcia appeared on behalf of the Gonzales Unified School District and attorney Ryan Tung listened to the PHC. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The expedited hearing shall take place at **600 Elko Street, Gonzales, California**. It is scheduled for January 20-22, 2015. On January 20, 2015, the hearing shall begin at 1:30 p.m.¹ and end at 5:00 p.m., and the remaining hearing days will be scheduled for 9:00 a.m. through 5:00 p.m.² Gonzales 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 provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

2. Issue and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity:

¹ During the PHC, 1:00 p.m. was indicated for the start time on January 20, 2015; however, the hearing will begin at 1:30 p.m. that day.

² Ms. Whipple requested that the hearing begin at 10:00 a.m. rather than 9:00 a.m. on January 21-22 due to the distance needed for the attorneys to travel to the hearing location. Good cause was not established to begin at 10:00 a.m. and the request was denied.

Issue: Did Gonzales procedurally deny Student a free appropriate public education under the disciplinary provisions of the Individuals with Disabilities Education Act by:

- a. Removing Student from his educational placement for more than 10 days without conducting a manifestation determination review meeting;
- b. Failing to notify Parent on the same day that it decided to take disciplinary action; and
- c. Failing to notify Parent of the applicable procedural safeguards?

Proposed Resolutions: Student seeks his placement be changed to an appropriate interim alternative educational setting for no more than 45 days. Student seeks an order requiring Gonzales to produce all educational records including writings relating to any communication whether in-person conversations, telephone conversations, emails, text messages, facsimile, letters, memorandums, and correspondence between and among any Gonzales employee and others relating to the incident or allegations of bullying regarding Student. Student also seeks an order that Gonzales be required to provide an appropriate interim alternative educational setting for no more than 45 days.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example “S-1” for Student or “D-1” for District). All pages of a party’s exhibit binder shall be consecutively numbered. Each exhibit will consist of one document or short series of documents that are related (for example, an individualized education program shall have its own exhibit rather than a single exhibit for all IEP’s). 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 may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Each party is expected to serve an exhibit binder containing its respective exhibits 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 included in the exhibit lists and not previously exchanged will not be admitted into evidence at the hearing unless it is supported by a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other party.

Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Only witnesses disclosed in a party's prehearing conference statement may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties are ordered to meet and confer to develop a proposed joint witness schedule. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized.³ The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party will be permitted to question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. Neither party requested to have a witness testify by telephone.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, both parties intend to record the hearing. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) that the operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

³ Ms. Garcia informed Ms. Whipple that Gonzales requires 72 hours-notice to obtain a substitute to release an employee from the classroom. This ALJ requested that the parties keep that in mind as they draft their joint proposed schedule, but informed Ms. Garcia that due to the nature of a hearing some witnesses may be required to testify on a day other than that originally anticipated and that Gonzales will need to make the witnesses available at the discretion of the ALJ.

8. Motions. No motions are currently pending or anticipated. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to the prehearing conference.

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

10. Compensatory Education and 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 shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Conduct 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.

12. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at **OAHADA@dgs.ca.gov** or 916-263-0880 as soon as the need is made known. Additional 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 Closed To the Public. At Student's request the hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue their attempts 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 days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE 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.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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: January 12, 2015

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings