

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAMBRIAN SCHOOL DISTRICT.

OAH Case No. 2014090680

ORDER FOLLOWING PREHEARING
CONFERENCE ON BIFURCATED
ISSUE

On January 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Roberta S. Savage, Attorney at Law, appeared on behalf of Parents and Student. Rodney L. Levin, Attorney at Law, appeared on behalf of the Cambrian School District (Cambrian). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at Cambrian's district offices located at 4115 Jacksol Drive, San Jose, California 95124, on February 4 through 5, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall start at 9:30 a.m. on the first day of hearing, and at 9:00 a.m. on the second day of hearing.¹ Cambrian shall provide a facility for the hearing that 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.

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. Cambrian shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them.

2. Bifurcated Issue and Proposed Resolution. The preliminary issue to be determined at the due process hearing was discussed and clarified during the PHC and is listed below. All other issues remain continued.²

Preliminary Issue: Whether an unforeseen and significant change has occurred in Student's circumstances resulting in a dramatic change in Student's educational needs, as outlined in section 3(d) of the Settlement Agreement of August 12, 2013?

Proposed Resolution: Student seeks a determination that an unforeseen and significant change has occurred in Student's circumstances resulting in a dramatic change in Student's educational needs, such that Student may pursue his due process claims alleging a denial of a free appropriate public education beginning July 31, 2014.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Only those exhibits pertaining to the preliminary issue are to be included in the exhibit binders. Cambrian shall use numbers to identify exhibits, and Student shall identify exhibits by letter. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), at least five business days prior to hearing. 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.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists or timely exchanged shall not be admitted into evidence at the hearing unless 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. 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 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. Student has listed 18 witnesses and Cambrian has listed 31 witnesses. At this time, Student intends to call the

² At the conclusion of the hearing on the bifurcated issue, the ALJ and the parties will discuss dates for the PHC and due process hearing as to the remaining issues. A separate scheduling order will issue after that discussion.

following witnesses: Parent, Dr. Elea Bernou, Mark Loos, and Lisa MacFarland.³ Cambrian does not anticipated calling most of its listed witnesses, and will likely call only those witnesses identified above by Student.

The parties are ordered to meet and confer by January 29, 2015, as to the schedule of witnesses and projected length of direct and cross-examination. At the start of the hearing, the parties shall present a final, joint schedule of witnesses with time estimates. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issue presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof and shall present his evidence first, followed by Cambrian. Where Student and Cambrian 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.

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 objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled. Neither party anticipates the need for telephonic testimony.

7. Electronic Recording of Hearing. At present, both parties intend to make an audio recording of 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) the operation of the party's recording mechanism will not be allowed to delay the hearing.

8. Motions. No pretrial motions are pending or contemplated. Any 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 January 23, 2015.

³ Cambrian agrees to produce current district employees without a subpoena.

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. 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 or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

11. Special Needs and Accommodations. 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, or 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>.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

12. Hearing Closed To the Public. At the request of Student, the hearing will be closed to the public.

13. 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 5:00 P.M. 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.

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

IT IS SO ORDERED.

DATE: January 23, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings