

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF EDUCATION AND
CORONA-NORCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080768

ORDER FOLLOWING PREHEARING CONFERENCE AND
NOTICE OF CONTINUED PREHEARING CONFERENCE

On January 10, 2022, Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The prehearing conference will be referred to as a PHC. John Nolte and Maureen Graves, Attorneys at Law, appeared on behalf of Student. Maria Gless, Attorney at Law, appeared on behalf of Riverside County Office of Education. Christopher Fernandes, Attorney at Law, appeared on behalf of Corona-Norco Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

PREHEARING CONFERENCE

The ALJ, on her own motion, continued the Prehearing Conference to January 14, 2022, at 9:00 a.m., to complete prehearing discussions with the parties, further clarify Student's issues and determine whether Student's Issue One, regarding exception to the statute of limitations shall be bifurcated from Student's remaining issues.

The parties are ordered to meet and confer on or before January 13, 2022, to complete discussions as requested by the ALJ in preparation for the January 14, 2022 Prehearing Conference.

The Due Process Hearing remains as scheduled for hearing on January 19, and 20, 2022. Any request for a continuance must be raised no latter than the start of the continued Prehearing Conference.

EXHIBITS

The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically.

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence on each other 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 Education Code section 56505, subdivision (e)(7) shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

IDENTIFYING EXHIBITS AND PAGE NUMBERS

Each exhibit must be identified by a letter and number. Student must use the letter S before the number to identify Student's exhibits. Corona-Norco Unified School District must use the letter D before the number to identify its exhibits. Riverside County Office of Education must use the letter C before the number to identify its exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Corona-Norco Unified School District's exhibit 1. A cover sheet with this identifying letter and number should be the first page of each exhibit. The electronic evidence program will automatically number the exhibits and additional page numbering or bates stamping should not be added.

CONTENT

Each exhibit must consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Exhibits should be in chronological order.

Parties should include resumes or curriculum vitae for each witness who is expected to testify as an expert.

Riverside County Office of Education and Corona-Norco Unified School District exhibits must include a copy of the school calendar for each school year in question.

Electronic copies of exhibits filed with OAH shall be filed by 5:00 PM at least five business days before the first day of hearing. 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.

EVIDENCE PRESENTATION

- A. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and bears the burden of proof. Student's case-in-chief shall be presented first, followed by Riverside County Office of Education and Corona-Norco Unified School District, unless otherwise ordered.
- B. The ALJ has tentatively determined that at the beginning of the hearing, the ALJ will only hear evidence pertinent to the statute of limitations and whether Student may assert claims arising more than two years before the filing of the complaint. First, Student will offer evidence supporting her contention that the statute of limitations does not apply. Then, Corona-Norco Unified School District will offer its evidence in favor of the application of the two-year statute of limitations, and then Riverside County Office of Education may do the same. Student will have a brief period for rebuttal. The ALJ will announce a ruling on the record. The factual findings and legal conclusions regarding this determination will be included in the written decisions in this matter. The parties and the ALJ will then discuss whether any changes to the hearing schedule are required for the parties to adjust their presentations. Thereafter, the hearing will proceed as described in stated in the Paragraph A.

WITNESSES

The parties shall serve their list of witnesses on each other in compliance with Education Code section 56505. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Parties are responsible for ensuring that all participants are familiar with and follow the Instructions for Joining the Online Due Process Hearing provided with this Order. Participants that have not previously used the MS Teams platform, may also find informative videos available like the one at this link from Microsoft:

<https://support.office.com/en-us/article/join-a-teams-meeting-078e9868-f1aa-4414-8bb9-ee88e9236ee4>.

The parties are responsible for ensuring that witnesses join the virtual hearing room at the designated date and time to testify. Witnesses are required to join the due process hearing by computer and appear by videoconference unless they do not have the necessary computer equipment. If a witness does not have the necessary equipment, the ALJ may permit the witnesses to appear by audio only or by telephone. "Audio only" means using a computer without webcam. Witness ability to attend the hearing by videoconference will be discussed at the start of the hearing.

The parties are responsible for producing their own witnesses unless otherwise ordered by the ALJ. Parties shall make witnesses under their control reasonably available. The parties must schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party will be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

The ALJ has discretion to limit the number of witnesses and the time allowed for witnesses' testimony. Education Code, section 56505.1, subdivision (h), empowers the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

PARTICIPANT INFORMATION FORM

Both parties have an ongoing obligation to ensure that OAH has current information 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 first day of hearing.

Any contact information provided shall be used for the limited purpose of issuing subpoenas or for contacting the witness(es) for purposes of attending the hearing and shall not be disclosed to any other person(s).

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 if 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. 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 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.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed 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 before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "Judith Pasewark".

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings