

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024060074

ORDER FOLLOWING EXPEDITED PREHEARING
CONFERENCE FOR HEARING BY VIDEOCONFERENCE

JUNE 17, 2024

On June 17, 2024, Administrative Law Judge Thanayi Lindsey, Office of Administrative Hearings, held an Expedited prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The expedited prehearing conference is called a PHC.

A. James Golfo, Attorney at Law, appeared on behalf of Student. Vivian Randolph, Attorney at Law, appeared on behalf of Monrovia Unified School District, referred to as Monrovia District. The expedited PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

EXPEDITED HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on June 25, 26, and 27, 2024 and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take three days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) OAH will conduct the due process hearing by videoconference using the Zoom application. Unless otherwise ordered, participants are required to appear by videoconference using computer or device with video capability and Zoom.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at <https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena>.

EXPEDITED ISSUES AND PROPOSED RESOLUTIONS

At the expedited PHC, Student asserted that Student's issues were not expedited claims. After considering the parties' discussion with the ALJ, as reflected on the record, the ALJ declines to unexpedite the case. As discussed on the record, Issues 1 and 2 in Student's Due Process Request for Hearing are expedited claims within the scope of title 20 United States Code sections 1415(k)(1)(E)(i) and (ii). Student's remedies seek a finding that Monrovia District violated Student's rights as it relates to suspensions and manifestation determination meetings and for Monrovia District to expunge Student's suspensions from the educational records. Therefore, Student did not meet its burden of showing that the due process complaint did not include expedited issues. Student's Motion to Unexpedite Issues is denied with prejudice.

Student's Motion includes a request to consolidate this case with the District filed case, OAH Case No. 2024050826. Student's and District's positions were heard, and the arguments were considered on the record. Procedurally, Student's motion to consolidate is not substantive and procedurally proper due to the ALJ's ruling to deny Student's Motion to Unexpedite. Expedited issues must be tried separately from unexpedited issues. If Student withdraws the expedited issues, then a Motion to Consolidate would be proper at this time. Therefore, Student's Motion to Consolidate is denied without prejudice.

The issues at the expedited due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the expedited PHC are as forth below. All of Student's remaining claims are issues pertaining to the denial of a free appropriate public education, or FAPE, which will be adjudicated in the non-expedited hearing. An individualized education program is called an IEP.

EXPEDITED ISSUES

1. During the 2023-2024 school year, did Monrovia District violate Student's rights under title 20 United States Code section 1415(k)(1)(E)(i)(I) by suspending Student on April 22, 2024, April 24, 2024, and May 6, 2024, when the behaviors related to the suspensions were caused by or was a direct and substantial relationship to Student's disabilities?
2. During the 2023 to 2024 school year, did Monrovia District violate Student's rights under title 20 United States Code section 1415(k)(1)(E)(i)(II) during the March 21, 2024 manifestation determination meeting by finding the behaviors regarding the suspension on August 18, 2023, August 22, 2023, October 24, 2023, March 5, 2024, and March 18, 2024 were the direct result of the District's failure to implement the IEP's classroom support services?
3. During the 2023 to 2024 school year, did Monrovia District violate Student's rights under title 20 United States Code section 1415(k)(1)(E)(i)(II) during the May 7, 2024 manifestation determination meeting by finding the behaviors regarding the suspension on April 22, 2024, April 24, 2024, and May 6, 2024 were the direct result of the District's failure to implement the IEP's Function Equivalent Replacement Behaviors, called FERB, and classroom support services?

Pursuant to discussions with the parties during the Prehearing Conference, the ALJ has clarified the statement of some issues and re-ordered the issues as allowed by the holdings in *J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443,

and *Ford v. Long Beach Unified Sch. Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. No change in substance has been made.

A free appropriate public education is called FAPE. An individualized education program is called IEP. Interim Alternative Educational Setting is called IAES.

PARTY ISSUE REVIEW RESPONSIBILITY AND DISPUTE NOTIFICATION

The parties are responsible for carefully reviewing the issues as stated in this prehearing conference order. These will be the issues considered at hearing. A party believing that an issue has been misstated or improperly omitted shall promptly file a notice in writing, prior to the first day of hearing, stating its concern and referring to supporting portions of the complaint.

OAH has not received a copy of Monrovia District's response to Student's complaint. Monrovia District shall file its response with OAH within three business days from the date of this PHC. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

EXPEDITED PROPOSED RESOLUTIONS

Student's proposed expedited resolutions that fall under title 20 United States Code section 1415(k) include a finding that Monrovia District violated Student's rights under title 20 United States Code section 1415(k)(1)(E)(i), subsections (l) and (ll), and an order expunging any adverse manifestation determination findings and suspensions from Student's educational records.

The ALJ reserves the right to award the following compensatory education remedies after the non-expedited issues have been decided:

- emotionally related mental health services for counseling, social work, and cognitive behavior therapy,
- a full-time non-public agency 1:1 aide,
- a non-public agency behavior intervention supervision, and
- an independent educational evaluation in the area of functional behavior assessment.

EXHIBITS

The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). The parties shall upload their exhibits electronically according to the Order Setting Procedures for Filing Exhibits Electronically. Timely uploading electronic hearing exhibits five business days before the first day of hearing constitutes that party's timely exchange of evidence in compliance with Education Code section 56505, subdivision (e)(7). If further assistance is needed, please contact OAH at OAHSEOps@dgs.ca.gov.

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. Monrovia District must use the letter D before the number to identify Monrovia District's exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Monrovia 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 expected to testify as an expert.

Monrovia District's 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.

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 who have not previously used the Zoom application, may find informative instructions on at by visiting, Getting Started with Zoom at <https://support.zoom.us/hc/en-us/categories/200101697>.

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 video. A witness's inability 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.

The ALJ has discretion to limit the number of witnesses and the time allowed for 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.

MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. Evidence may be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties are ordered to meet and confer no later than June 18, 2024, at 5:00 PM to discuss scheduling witnesses and how much time each witness will take. The parties shall discuss any issues related to counsel and witnesses appearing by videoconference for hearing, electronically viewing exhibits during the hearing, and subpoenas, if any. The parties should attempt to eliminate duplicate exhibits from their hearing exhibits. The parties shall discuss whether they can produce a written stipulation as to pertinent facts, contentions, resolutions and the authenticity and admissibility of documents to shorten the length of time needed for the hearing.

As part of the meet and confer process, Monrovia District shall inform Student which proposed witnesses are District employees. Monrovia District shall also identify the witnesses on Student's list that require a subpoena. Monrovia District may agree to accept service for a witness under Monrovia District's control or provide Student with the witness's most recent contact information.

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 a witness to attend the hearing. Any contact information shall not be disclosed to any other person.

EVIDENCE PRESENTATION

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 Monrovia District unless otherwise ordered.

WITNESS LISTS

The parties must provide a joint proposed witness list to the ALJ on the first day of hearing. The list should include the first and last name of the witness, which party is calling the witness to testify, and include dates and time estimates of each witness's expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list. Student must have witnesses available in case there is no agreement.

At the beginning of the hearing, the ALJ and the parties will discuss the length of time anticipated for each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties must be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time for the testimony of each witness.

SCOPE OF WITNESS EXAMINATION

Each witness will be called to testify only once, except for rebuttal purposes. All parties must examine a witness on all issues when the witness is first called to testify. Requiring a witness to appear only once takes priority over the order in which parties present their case-in-chief.

AUDIO ONLY OR TELEPHONIC TESTIMONY

Whether a witness may appear by audio only or telephone instead of videoconference 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 audio only or telephone shall request permission to do so before the hearing. Any party seeking to present a witness who cannot access exhibits electronically must inform the ALJ at the beginning of the hearing.

ELECTRONIC RECORDINGS

AUDIO RECORDING

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon the following conditions:

1. the OAH recording is the only official recording;
2. the parties shall turn their recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;

3. operation of the party's recording mechanism will not be allowed to delay the hearing;
4. a party's recording may not be given, provided or played to a witness, or potential witness;
5. the recording is subject to the same confidentiality as the due process hearing; and
6. participants shall not take screenshots of the videoconference nor share or publish any portion of the videoconference or audio recording.

Student's and District's requests to make an audio recording of the hearing is granted. If either party wants to record the hearing, the request must be made before the hearing.

VIDEO RECORDING

No party, witness or anyone else may videorecord any part of the proceedings or stream live through any means.

RECORDINGS AS EXHIBITS

Recordings may not be uploaded electronically without the ALJ's permission. The ALJ has discretion to admit or exclude evidence in the form of a recording. Any request to submit a recording shall be considered at the time of hearing.

The ALJ may grant or deny the request or grant the request subject to certain conditions. The party offering the recording must establish that all or a part of the recording is relevant. The ALJ may request a transcript of the portion of the recording requested or have the party offering the recording to provide an exact identifiable portion of the recording the party seeks to admit. The identities of any person speaking

on the portion of the tape being introduced must be established. An ALJ may allow the opposing party to offer additional portions of a recording to establish the context, or to rebut, the recording.

Neither party anticipates the use of recordings as an exhibit.

COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education. Documents offered as evidence to support a request for reimbursement must be separated by vendor.

MOTIONS

Student's Motion to Unexpedite the Case and Consolidate the Issues with District Case No. 2024050826

Student filed a Motion to Unexpedite the Case and to Consolidate the Issues with OAH Case No. 2024050826. The motions were heard as two separate issues. After considering the moving party and the responding party arguments, Student's Motion to Unexpedite the Issues is denied with prejudice. The expedited issues remain on calendar in this case. Student's Motion to Consolidate The Case with OAH Case No.2024050826 is denied without prejudice.

The parties did not contemplate filing any further motions.

STIPULATIONS

Stipulations to pertinent facts, contentions, resolutions and authenticity and admissibility of documents are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing prior to the start of the hearing.

CONDUCT OF PARTICIPANTS AND HEARING ROOM DECORUM

All participants to the videoconference should observe the same decorum as in an in-person due process hearing. Participants must conduct themselves in a professional and courteous manner at all times. Cellular phones, telephones and computer notifications must be shut off or set to silent during the hearing unless the ALJ grants permission otherwise. Participants should appear from a private location, unless otherwise ordered. Participants should take reasonable efforts to minimize background noise and maintain adequate room lighting. Use of virtual background images are at the discretion of the ALJ. Witnesses are prohibited from reading exhibits, documents, notes, text messages, telephones or computers while testifying, unless permitted to do so by the ALJ. The parties, their representative and witnesses are prohibited from passing notes to, exchanging electronic messages with, or signaling the witness in any way while the witness is testifying.

LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

Neither party requested and accommodation. A party or participant in this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable

accommodation is available on OAH's website at:

<https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Request-Reasonable-Accommodations-for-OAH-Legal-Proceedings>.

HEARING CLOSED TO THE PUBLIC

The expedited hearing is closed to the public. Special education hearings are closed to the public unless Student requests the expedited hearing to be open to the public.

An ALJ may restrict attendance because of the physical limitations of the hearing facility or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., Tit. 1, § 1030.) Government Code, section 11425.20 empowers the ALJ to order an open hearing to be closed or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the case.

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 by visiting OAH Secure e-file 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.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.

Thanayi Lindsey
Thanayi Lindsey (Jun 18, 2024 09:31 PDT)

Thanayi Lindsey

Administrative Law Judge

Office of Administrative Hearings