BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENTS ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2021010304

and

PARENTS ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2020050609

ORDER DENYING MOTIONS TO EXCLUDE COUNSEL FOR WITNESSES AND TO STRIKE COUNSEL'S STATEMENTS AND MAXIM HEALTHCARE'S OPPOSITION

MARCH 29, 2021

On March 17, 2021, Administrative Law Judge Rommel P. Cruz held a due process hearing by videoconference. Present were attorneys Jenny Chau and Diana Maltz for Student. Student's mother was present, who was assisted by a certified western Armenian interpreter. Attorney Sundee Johnson was present for Glendale Unified School District. Beatriz Bautista, Director of Special Education, appeared on behalf of Glendale Unified. Administrative Law Judge is referred to as ALJ.

Two witnesses, Samantha Gonzalez and Magaly Zentino, appeared with their attorney Jessica Neighbors. Gonzalez and Zentino are former employees of Maxim Healthcare. Neighbors and her law firm also represent Maxim Healthcare. The ALJ rescheduled Gonzalez's and Zentino's testimony to April 1, 2021, and issued a tentative ruling to allow Neighbors to observe the closed hearing during Gonzalez's and Zentino's testimony. The ALJ permitted Student to file a motion to exclude Neighbors from observing the hearing. The motion was due on March 22, 2021, and a response by Maxim Healthcare due on March 24, 2021.

On March 22, 2021, Student filed a Motions to Exclude Counsel for Maxim Healthcare Services from the Due Process Hearing and to Strike Counsel's Statements from the Record. Student contends the hearing his closed to the public, that Maxim Healthcare is not a party to the consolidated matters, and therefore, its counsel, Neighbors, should not be permitted to observe the hearing. Student further claims that

counsel for Maxim Healthcare will have access to the exhibits through Gonzalez's and Zentino's access to the CaseLines program. CaseLines is a digital evidence management system. Student also argues that Neighbor's statements during the hearing on March 17, 2021, related to Chau's communications with Gonzalez and Zentino should be stricken from the record as prejudicial to Student.

On March 25, 2021, Maxim Healthcare filed an opposition to the motions. The opposition indicated that Maxim Healthcare, along with its former employees, including Gonzalez and Zentino, were represented by Neighbors and her law firm. Maxim Healthcare further contends that Gonzalez's and Zentino's interests are adverse to Student due the pending civil matter filed by Student against Maxim Healthcare, and therefore, Gonzalez and Zentino should be permitted to have their counsel present during their testimony in these matters.

On March 25, 2021, Student filed a reply and moved to strike Maxim Healthcare's opposition as untimely. Maxim Healthcare filed another opposition on March 26, 2021.

DISCUSSION

Attorney Jessica Neighbor is permitted to observe the hearing during the testimony of Gonzalez and Zentino. The ALJ may take action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., tit. 1, § 1030). In addition, Government Code, section 11425.20 empowers the ALJ to make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the particular case. Neither Neighbors nor any other member of her law firm will have direct access to the exhibits in these matters, either through CaseLines or in any other form. Gonzalez and Zentino will be permitted to view the exhibits on CaseLines, but will not have access to download the exhibits. Furthermore, Gonzalez and Zentino shall not

download or capture the exhibits, nor share the exhibits with Neighbors or anyone else. OAH will send Gonzalez and Zentino an invitation to access CaseLines at approximately 8:00 AM on April 1, 2021, and their access to CaseLines will be removed following their testimony. Accordingly, Student's motion to exclude Neighbors from observing the hearing during the testimony of Gonzalez and Zentino is denied.

In addition, neither Gonzalez nor Zentino are employees of Glendale Unified, and Maxim Healthcare is not a party in these consolidated matters. Student failed to establish how Neighbor's statements at the hearing on March 17, 2021, are prejudicial to Student as it relates to the issues for hearing involving the alleged denials of a free appropriate public education by Glendale Unified. Further, the ALJ makes no determination as to the appropriateness of Chau's communications with Gonzalez and Zentino. Accordingly, Student's motion to strike Neighbor's statements from the record is denied.

Lastly, Student failed to demonstrate how the timing of filing of Maxim Healthcare's opposition, received by OAH on March 24, 2021, at 6:57 PM prejudiced Student. Accordingly, Student's motion to strike Maxim Healthcare's opposition is denied.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings