BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CLASSICAL ACADEMY HIGH SCHOOL.

OAH CASE NUMBER 2023100812

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE

APRIL 23, 2024

On April 22, 2024, Administrative Law Judge Rommel P. Cruz, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Attorney Alexander Rodriguez appeared on behalf of Student. Attorneys Jim Sanft and Katherine Yuna appeared on behalf of Classical Academy High School. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

HEARING DATES, TIMES, AND LOCATION

DUE PROCESS HEARING

The hearing will take place on April 30, May 1, and 2, 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. 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.

ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the PHC are:

ISSUES

At the PHC, Student withdrew Issue 2c as described in his due process hearing request, called a complaint. In addition, the claim in Issue 17 as described in the complaint does not involve an alleged violation, but rather, whether reimbursement of costs related to Student's attendance at Fusion Academy is an appropriate remedy for any violation. Accordingly, Issue 17 is not listed as an issue below.

Further, Student clarified at the PHC, that Issue 10 as described in Student's complaint and PHC Statement filed April 17, 2024, alleges Classical Academy discriminated against him by failing to address bullying. Student explained that Issue 10 is distinguishable from Issue 6 described in this Order, because Issue 10 involves the alleged discrimination by Classical Academy against Student, beyond the failure to investigate bullying against Student, and the failure to offer a safety plan. Student's complaint does not claim, nor did Student clarify at the PHC, that Issue 10 involved a violation of the Individuals with Disabilities Education Act, called the IDEA, or related California special education laws. At the PHC, Classical Academy moved to dismiss Issue 10 because OAH does not have jurisdiction over the discrimination claim.

The purpose of the IDEA, (20 U.S.C. § 1400 et. seq.) is to ensure that all children with disabilities have 2 available to them a free appropriate public education, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free

appropriate public education, called a FAPE, to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction to decide claims other than those asserting violations of the IDEA or related California special education laws.

Issue 10 of Student's complaint does not assert a violation of the IDEA or related California special education laws. OAH does not have jurisdiction to resolve the claim in Issue 10 because neither the IDEA nor related California special education laws govern discrimination. Accordingly, Issue 10 is dismissed.

The remaining issues for hearing have been clarified and organized as follows:

1. Did Classical Academy deny Student a FAPE from October 20, 2021, through the end of the 2021-2022 school year, by failing to conduct an appropriate occupational therapy assessment dated September 21, 2021?
2. Did Classical Academy deny Student a FAPE during 2021-2022 school year, because the October 22, 2021, psychoeducational assessment failed to:
    a. include formal, standardized structured observations of Student; and
    b. determine and measure Student's history of progress towards individualized education program, called IEP, goals?
3. Did Classical Academy deny Student a FAPE during the 2021-2022 school year by failing to conduct an appropriate speech and language assessment dated November 5, 2021?

4. Did Classical Academy deny Student a FAPE from October 20, 2021, through the 2021-2022 school year, by:
    a. failing to conduct a functional behavior assessment;
    b. failing to conduct a comprehensive, accurate speech and language assessment;
    c. failing to conduct a comprehensive, accurate occupational therapy assessment;
    d. failing to offer goals in reading, writing and math;
    e. failing to offer goals in social emotional and behavioral functioning;
    f. failing to offer goals in expressive, receptive and pragmatic language;
    g. failing to offer goals in executive functioning;
    h. failing to develop an updated behavior intervention plan;
    i. failing to offer specialized academic instruction reasonably calculated to permit Student to make academic progress;
    j. failing to offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress;
    k. failing to offer therapeutic services reasonably calculated to permit Student to make social emotional and behavioral progress;
    l. failing to offer speech and language services reasonably calculated to permit Student to make progress;
    m. failing to offer occupational therapy services reasonably calculated to permit Student to make progress;
    n. failing to implement therapeutic services;
    o. failing to implement behavior intervention services;

p. failing to implement specialized academic instruction;
q. failing to implement speech and language services;
r. failing to implement occupational therapy services;
s. failing to allow Parent participation in developing the October 22, 2021, IEP, before removing behavior intervention services during unstructured time;
t. reducing speech and language services in the October 22, 2021, IEP; and
u. reducing occupational therapy services in the October 22, 2021, IEP?

5. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, by failing to comprehensively assess Student after he suffered a concussion and a traumatic brain injury on August 31, 2022?
6. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, by failing to investigate and offer a safety plan to address bullying?
7. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, because the November 15, 2022, functional behavior assessment was not comprehensive and accurate?
8. Did Classical Academy deny Student a FAPE during the 2022-2023 school year, by failing to:
    a. offer goals in reading, writing and math;
    b. offer goals in social-emotional and behavioral functioning;
    c. offer goals in expressive, receptive, and pragmatic language;
    d. offer goals in executive functioning;
    e. offer specialized academic instruction reasonably calculated to permit Student to make academic progress;

f. offer behavior intervention services reasonably calculated to permit Student to make social-emotional and behavioral progress;

g. offer therapeutic services reasonably calculated to permit Student to make social-emotional and behavioral progress;

h. offer speech and language services reasonably calculated to permit Student to make progress;

i. offer occupational therapy services reasonably calculated to permit Student to make progress;

j. develop an updated behavior intervention plan;

k. implement specialized academic instruction;

l. implement behavior intervention services;

m. implement therapeutic services;

n. implement speech and language services; and

o. implement occupational therapy services?

9. Did Classical Academy deny Student a FAPE during the 2023-2024 school year, through October 20, 2023, by failing to amend the October 18, 2022, IEP following the IEP team meetings held from February 8, 2023, through May 5, 2023, specifically, amendments to the IEP's offer of:

    a. goals,

    b. services, and

    c. placement?

A party must immediately file a written objection with OAH if the issues as described above do not reflect the party's understanding of the issues as clarified at the PHC. The ALJ will address any objections on the first day of hearing.

PROPOSED RESOLUTIONS

The resolutions requested by Student include reimbursement of costs for Student's attendance at Fusion Academy, and publicly funded independent educational evaluations in neuropsychology, psychoeducation, speech and language, occupational therapy, educationally related mental health services, and functional behavior. Further, Student requests compensatory educational services and training for Classical Academy staff on their responsibilities under the IDEA and California special education laws.

Classical Academy filed its response to Student's complaint on October 30, 2023. (*M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

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. Classical Academy must use the letter D before the number to identify Classical Academy's exhibits. For example, S-1 means Student's exhibit 1 and D-1 means Classical Academy'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.

Classical Academy'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 April 25, 2024, 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, Classical Academy shall inform Student which proposed witnesses are Classical Academy employees. Classical Academy shall also identify the witnesses on Student's list that require a subpoena. Classical Academy may agree to accept service for a witness under Classical Academy'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 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 Classical Academy's case-in-chief, 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. The parties 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

Student's and Classical Academy's requests to make an audio recording of the hearing are granted, 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.

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.

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

On April 17, 2024, Student filed motions to quash three subpoenas duces tecum issued by Classical Academy. On April 19, 2024, Classical Academy filed an opposition to the motions. The motions to quash are taken under submission and will be addressed in a separate order.

The parties have issued additional subpoenas duces tecum and anticipate filing motions to quash prior to the hearing. No other prehearing motions are pending or contemplated. Any motion that was not filed three business days before the PHC, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

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 an accommodation or a language interpreter. 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 hearing is closed to the public. Special education hearings are closed to the public unless a student requests the hearing to be open to the public.

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.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings