

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

IN THE MATTER OF

OSPI CAUSE NO. 2016-SE-4567

OAH DOCKET NO. 10-2016-OSPI-78910

WASHINGTON STATE SCHOOL DISTRICT

**PREHEARING ORDER**

A prehearing telephone conference was held before Administrative Law Judge (ALJ) John Smith on November 2, 2016, pursuant to notice mailed to the parties. The Parent of the Student whose education is at issue<sup>1</sup> appeared and represented herself in this matter. The Washington State School District (District) was represented by Jay Jon, attorney at law. Also present were Jane Doe, District director of special education.

Based upon the statements of the parties and the pleadings and documents on file herein, the following Prehearing Order is entered:

PRIOR ORDERS

1. All prior orders in the above matter remain in effect unless expressly modified or rescinded herein.

STAY PUT

2. Unless otherwise agreed between the parties, the Student's placement during the pendency of these proceedings is the educational program and placement in effect at the time the Appellant's request for due process hearing was filed. See 20 USC §1415(j) and Washington Administrative Code (WAC) 392-172A-05125. Disputes regarding the stay put placement of the Student may be raised by either party.

READINESS PREHEARING CONFERENCE

3. A prehearing telephone conference will be held as follows:

**DATE: December 22, 2016**  
**TIME: 2:30 p.m.**  
**PLACE: By telephone**

4. The parties are instructed to call the Office of Administrative Hearings at (800) 845-8830 or (206) 389-3400 **no later than ten minutes prior** to the scheduled time and leave their telephone number with the receptionist. The ALJ will initiate the conference call at the scheduled time.

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<sup>1</sup>To ensure confidentiality, names of parents and students are not used.

5. The purpose of the prehearing conference is to establish the parties' readiness for hearing and address other matters as necessary. This date is not intended to be used by a party to raise contested issues or motions which may be raised more suitably earlier.

#### DUE PROCESS HEARING

6. The due process hearing is continued from the original date in order to accommodate the parties' availability. Good cause is found to grant the continuance. See Washington Administrative Code (WAC) 392-172A-05100(6); WAC 10-08-090.

7. By agreement of the parties, the due process hearing will be held as follows:

DATE: **January 3 through 6, 2017**  
TIME: **9:00 a.m. to 5:00 p.m., each day**  
PLACE: **Washington State School District  
67890 123<sup>rd</sup> Ave  
Seattle, WA 98999**

8. The District shall make arrangements for a hearing room and a separate caucus room for the Parent.

9. The due process hearing shall be closed to the public unless the Parent requests in writing that it be open.

10. The ALJ shall preside at the due process hearing. The ALJ is not an employee of OSPI or the District. The ALJ is an employee of OAH, an independent Washington State agency.

11. A court reporter shall be present at the due process hearing. The court reporter's record shall be the official record of the due process hearing. The ALJ will also digitally record the due process hearing. The ALJ's digital recording is not the official record, and a copy will not be provided to the parties.

12. The parties should refer to the original Scheduling Notice regarding details and information not affected by the above changes.

13. Firearms and other dangerous weapons are prohibited at hearings and in all OAH offices. WAC 10-20-010.

#### FAILURE TO APPEAR

14. **A party who fails to appear at any stage of the proceeding, including the hearing and prehearing conference, may be held in default in accordance with Revised Code of Washington (RCW) 34.05.440 and .434. If the party failing to appear at any stage of the proceeding including the hearing and prehearing conferences is the Appellant, the matter may be dismissed. If the party failing to appear is not the Appellant, the matter may proceed without that party.**

## ISSUES AND REMEDIES

15. The issues for the due process hearing are:
- a. Whether the District denied the Student a free appropriate public education (FAPE) from mm/dd/yyyy through mm/dd/yyyy; and
  - b. Whether the Parent is entitled to the requested remedies, or other equitable remedies, as appropriate.

## ALTERNATIVE DISPUTE RESOLUTION

16. Sound Options Mediation. OSPI offers parties in special education disputes voluntary, confidential and free mediation services through the Sound Options program. This is non-binding mediation, and the parties are not required to reach a settlement should they choose to participate in mediation. Specially trained mediators have training in state and federal laws and regulations related to the education of students with disabilities and collaborative problem solving. To request mediation or for more information call: (800) 692-2540 (WA State) or (206) 842-2298 (Seattle area).

## HEARING PREPARATION

17. The burden of persuasion in special education hearings is on the party seeking relief. See *Schaffer v. Weast*, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005). Therefore in this case, the Parent has the burden of persuasion and will present evidence first.

18. The Parent plans to appear at the hearing without an attorney. The following suggestions are offered to parties who are not represented by an attorney. Prepare a hearing notebook for your personal use during the hearing. Place in the notebook written questions for each witness, including your witnesses and the other party's witnesses. If you plan to testify, include notes to remind yourself of important points. If a witness will be testifying about any document (exhibit) the party intends to offer into evidence, place a copy of the exhibit in the notebook directly following the questions for that witness. The parties should remember that each document must be identified by at least one witness before it may be admitted and considered over a potential objection by the other party.

## SUBPOENAS

19. Generally. If a party without an attorney seeks the attendance of a witness not willing to attend the hearing, or the production of documents from a person unwilling to produce them, and the other party has refused to assist in its production, the unrepresented party may ask the ALJ for a subpoena. A subpoena is a demand for a person to attend, or document be produced, at the hearing. The subpoena request must include the following: the name, telephone number and address of the witness, an explanation of why the witness or document is needed, and in the case of a document, a description of the document, its location, and information about who has possession and control of the document. The ALJ will decide whether to grant the request. The request should be made as soon as possible since it takes time to process and serve the subpoena. The party requesting the subpoena must arrange for

the subpoena(s) to be personally served upon the witness by someone other than the party. WAC 10-08-120.

20. Subpoena of a District Employee. If the witness to be subpoenaed is a District employee, prior to requesting issuance of a subpoena the Parent is required to first contact the District and inquire whether the District will make that witness available at the hearing without a subpoena. A subpoena will not be issued for a District employee if the District is willing to make the witness available without a subpoena.

21. A subpoena request form is enclosed with this Order. A party requesting the issuance of a subpoena must complete the request form for each witness for whom a subpoena is requested, and return the form to OAH. A short prehearing telephone conference will then be held to address which subpoenas, if any, will be issued.

#### ACCESS TO RECORDS AND DISCOVERY

22. A parent or guardian has the right to inspect and review any education records that are collected and maintained by the School District, promptly and without unnecessary delay. These records include the general education/cumulative file, special education file, medical file and discipline file. See WAC 392-172A-0500, -05190 and 34 CFR § 300.501(a).

23. The parties are to pursue discovery on an informal basis. If disputes arise either party may request a prehearing conference by contacting the ALJ in writing with proposed dates that are agreeable to both parties. The written request should include the following information:

- a. What information you want;
- b. Why the information is necessary;
- c. What the party has done previously to obtain the information; and
- d. What you want the ALJ to order.

#### EXCHANGE OF DOCUMENTS AND WITNESS LISTS

24. Each party is hereby ordered to provide to the other party:

- a. Copies of all documents the party intends to offer into evidence;
- b. A list of all documents, referenced by exhibit number, title and date of document; and,
- c. A list identifying each witness the party intends to have testify at the hearing (by name, title, business address and a brief summary of the testimony to be offered).

25. Expert Witnesses. In addition to the documents identified in the above paragraph, any party who will offer opinion testimony from a witness qualified as an expert shall include in that party's documents a copy of a curriculum vitae (a resume or summary of an individual's academic, professional and work history) for that witness. Testimony will not be taken at the due process hearing to *establish* the expert qualifications of the witness reflected in the curriculum vitae. The opposing party shall retain the right to *cross-examine* the witness on his/her qualifications.

26. These documents and lists shall be exchanged no later than 5:00 p.m., December 23, 2016, which is five business days prior to the first day of the hearing.

27. These documents and lists shall be exchanged between the parties and filed with the ALJ by personal delivery, messenger or U.S. mail. Parties are not permitted to fax or email these documents and lists.

28. Failure to comply with the above exchange dates may result in the document or witness being excluded from the hearing. WAC 392-172A-05100(1)(c) and (2) and/or 34 CFR § 300.512(a)(3) and (b).

29. The parties shall number their respective exhibits, in the bottom right corner of each page, as follows:

District: beginning with D1, pg 1, 2; D2, pg 1, 2, *etc.*

Parent: beginning with P1, pg 1, 2; P2, pg 1, 2, *etc.*

30. Each party shall provide copies of their documents in three-ring binders, with tabs for each document, e.g. P1, P2, P3.

31. Each party shall bring an additional, complete set of their marked exhibits to the due process hearing to be used by the witnesses during their testimony.

32. Failure of a party to number proposed exhibits in accordance with the above instructions may result in the return of all proposed exhibits to the party for proper numbering.

33. A blank copy of an Exhibit List is enclosed with this Order. If either party wishes to receive a blank shell of the Exhibit List form electronically, they may contact Ms. Lan Le at OAH at (206) 389-3400, or toll-free at (800) 845-8830 and provide their email address.

#### PRE- AND POST-HEARING BRIEFS

34. Prehearing briefs are optional, but encouraged. A party electing to submit one shall provide it to the opposing party and the ALJ no later than the date of exchange of documents, by 5:00 p.m. on December 23, 2016.

35. Post-hearing submissions (briefs or proposed findings of fact and conclusions of law) are optional. The due date for any post-hearing submissions shall be set at the conclusion of the due process hearing.

#### DUE DATE FOR WRITTEN DECISION

36. The Parent requests that the 45-day deadline for issuance of a written decision be continued to thirty (30) calendar days after the close of record in order to accommodate the requested hearing dates. Good cause exists to grant the request. WAC 392-172A-05110(3); 34 CFR 300.515(c). The 45-day due date is continued to 30 days after the record of the hearing closes. The record closes on the last day of the hearing or on the date when the parties have submitted post hearing briefs and proposed findings of fact and conclusions of law should they be required or elect to do so. The due date for these documents will be set by the ALJ at the

conclusion of the hearing or earlier at either party's request. As the record of the hearing will presently close on the last day of hearing on January 6, 2017, the current due date for the written decision in this matter is **February 5, 2017**.

#### OBJECTION TO PREHEARING ORDER

37. The parties shall have **ten (10) calendar days from the mailing date** of this Prehearing Order to file any written objection to the Order. If no written objection is filed within that period, this Prehearing Order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order. WAC 10-08-130(3).

Signed at Seattle, Washington on November 3, 2016.

*John Smith*

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JOHN SMITH  
Administrative Law Judge  
Office of Administrative Hearings

#### SUMMARY OF SCHEDULING DATES

This Summary of Scheduling Dates is provided as a courtesy to the parties. The parties should carefully read the Prehearing Order. In the event of any discrepancy between the Prehearing Order and this Summary, the dates set out in the Prehearing Order shall control.

December 22, 2016: Readiness prehearing conference.

December 23, 2016: Exchange and filing of proposed exhibits and exhibit and witness lists.

December 23, 2016: Filing of post-hearing briefs/arguments.

January 3 through 6, 2017: Due process hearing.

February 5, 2017: Due date for written decision.

CERTIFICATE OF SERVICE

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein.

Parent  
12345 67<sup>th</sup> Street  
Seattle, WA 98999

Jane Doe, Director of Special Education  
Washington State School District  
67890 123<sup>rd</sup> Ave  
Seattle, WA 98999

Jon Jay, Attorney at Law  
1213 4<sup>th</sup> Ave SE, Suite 100  
Seattle, WA 98999

Enclosures: Blank Exhibit List  
Subpoena Request Form  
Information about Special Education Due Process Hearings

cc: Administrative Resource Services, OSPI  
Matthew D. Wacker, Senior ALJ, OAH/OSPI Caseload Coordinator