

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

██████████ School District

Docket No. 01-2021-OSPI-00000

PREHEARING ORDER

Agency: Office of Superintendent of
Public Instruction

Program: Special Education

Cause No. 2021-SE-0000

A telephonic prehearing conference was held before Administrative Law Judge (ALJ) Jane Doe on April 5, 2021. The Parent of the Student whose education is at issue¹ represented himself. The ██████████ School District (District) was represented by ██████████ attorney at law. Also, present was ██████████ District director of special education.

Based upon the statements of the parties, the pleadings and documents on file, and rulings made by the ALJ, IT IS ORDERED:

PRIOR ORDERS

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 All prior orders in the above matter remain in effect unless expressly modified or rescinded in this order.

STAY-PUT

2. The Student's placement during the pendency of these proceedings is the educational program and placement in effect at the time the due process request (Complaint) was filed unless the parties agree to a different placement. WAC 392-172A-05125. Either party may raise a dispute regarding the Student's stay-put placement.

READINESS PREHEARING CONFERENCE

3. A readiness prehearing telephone conference is scheduled:

DATE: **May 17, 2021**
TIME: **2:00 p.m.**
PLACE: **By Telephone Conference Call**

¹ To ensure confidentiality, names of parents and students are not used.

4. At the time of your prehearing conference, please call 1-855-929-3239 (toll free). When prompted, enter access code 246 431 58808 followed by the pound sign (#). You will not have a PIN, so when prompted, enter the pound sign (#) again. There will be silence until the ALJ joins the conference. You may be waiting as long as 10 minutes for the ALJ to join the conference call. Please make sure your phone has sufficient reception and charge to last the entire proceeding. If you have problems connecting to the call, or if the ALJ has not joined the hearing within 10 minutes after the scheduled start time, please immediately contact the Office of Administrative Hearings (OAH) Customer Service Center at (800) 845-8830 or email oah.ospi@oah.wa.gov.

5. The purpose of the readiness prehearing conference is to establish the parties' readiness for hearing and address other matters as necessary. The readiness prehearing conference is not intended to be used by a party to raise contested issues or motions which could have been raised earlier in the proceedings.

DUE PROCESS HEARING

6. There is good cause to continue the due process hearing from the original date. WAC 392-172A-05100, 10-08-090. The due process hearing scheduled for April 19, 2021 is STRICKEN.

7. The due process hearing is scheduled:

DATE: June 2 – 4, 2021
TIME: 9:00 a.m. – 5:00 p.m., each day
PLACE: Videoconference

8. The due process hearing shall be closed to the public unless there is a written request that it be open to the public.

9. The ALJ shall preside at the due process hearing. The ALJ is not an employee of the Office of Superintendent of Public Instruction (OSPI) or the District. The ALJ is an employee of OAH, an independent Washington State agency.

10. 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.

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

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

VIDEOCONFERENCE INSTRUCTIONS

13. The hearing will be hosted by Capitol Pacific Reporting, which will send the parties a link to join to the videoconference in advance of the hearing dates. **There will be a different link for each day of the hearing. The parties must send the link to their witnesses and participants for each day of the hearing.**

14. Unless they are a party representative, witnesses should connect to the videoconference only during their testimony. The parties should have a way to contact their witnesses to let them know when to connect to the videoconference.

15. The parties are responsible for discussing with their witnesses in advance the practical considerations involved in attending a videoconference hearing. The parties should check that their witnesses have a sufficiently reliable internet connection and access to adequate computer hardware to use videoconferencing software.

16. **The parties should work together to ensure all witnesses have all marked exhibits potentially necessary for their testimony but do not have access to confidential information that is not relevant to their testimony.** Each party is responsible for ensuring that a witness has a copy of any exhibits the party will refer to during questioning.

17. The parties should plan to have a way to discuss matters with their clients outside of the videoconferencing software. They should not count on “breakout rooms” within the software.

18. **No attorney or party is to have any contact by any means whatsoever with a witness while that witness is testifying. The attorneys and parties will ensure that when a witness is testifying, no other individual is present with or in communication with that witness.**

FAILURE TO APPEAR

19. A party who fails to appear at any stage of the proceeding, including the hearing and prehearing conferences, may be held in default in accordance with Revised Code of Washington (RCW) 34.05.434 and .440. If the party who filed the Complaint fails to appear at any stage of the proceeding including the hearing and prehearing

notebook should also include questions for your witnesses and the other party's witnesses. If you plan to testify, include notes to remind yourself of important points.

SUBPOENAS

24. Generally. A subpoena is a demand for a person to attend, or document to be produced, at the hearing. A self-represented party may ask an ALJ for a subpoena when a witness is not willing to attend the hearing or a person is unwilling to produce documents, and the opposing party has refused to assist with production. Before requesting a subpoena, a self-represented party must ask the proposed witness if they agree to appear and testify without a subpoena. A subpoena will not be issued for a witness who is willing to appear without a subpoena.

25. 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. 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 who requests 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.

26. Subpoena of a District Employee. Before requesting a subpoena for a District employee, a self-represented party must ask the District whether it will make the employee available at the hearing without a subpoena. A subpoena will not be issued if the District will make the employee available without a subpoena.

ACCESS TO RECORDS AND DISCOVERY

27. A parent 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-05000, -05190.

28. The parties are authorized to pursue formal and informal discovery without involving the ALJ. If a dispute arises, either party may file a written motion seeking the ALJ's involvement. *The ALJ will not become involved unless the parties have met and conferred in good faith in an effort to resolve the dispute.* The motion must include the following information:

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

EXCHANGE OF DOCUMENTS (proposed exhibits); EXHIBIT AND WITNESS LISTS

29. Each party shall provide to the other party and the ALJ:

- a. *Copies of all exhibits* (documents) the party intends to offer into evidence;
- b. An *exhibit list* of all documents that includes the exhibit number and the title and date of each document; and
- c. A *witness list* that identifies 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).

30. Expert Witnesses. Parties who plan to offer opinion testimony from a witness qualified as an expert must include in their documents 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 their qualifications.

31. These documents and lists shall be exchanged between the parties and filed with the ALJ no later than 5:00 p.m., May 25, 2021, which is five business days prior to the first day of the hearing.

32. The parties may exchange these documents and lists with each other in any manner upon which they agree.

33. The parties shall file these documents and lists with OAH through the OAH participant portal or by secure email. Documents must be attached to the secure email, not in the body of the email.

34. 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).

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

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

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

36. A party's proposed exhibits may be returned if the party fails to number them in accordance with the above instructions.

37. A blank copy of an Exhibit List is enclosed with this Order. Please email oah.ospi@oah.wa.gov to request an electronic copy of the Exhibit List form.

PRE- AND POST-HEARING BRIEFS AND MOTIONS

38. Prehearing briefs are optional but encouraged. A party who decides to submit a prehearing brief must provide it to the opposing party and the ALJ no later than the document exchange date; by 5:00 p.m. on May 25, 2021.

39. Post-hearing briefs are optional. The ALJ will set the due date for any post-hearing briefs at the conclusion of the due process hearing.

DUE DATE FOR WRITTEN DECISION

40. The District moved to extend the 45-day deadline for a written decision in this case to thirty (30) days after the record of the hearing closes. There is good cause to grant the request. See WAC 392-172A-05110. The due date is extended to thirty (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 file their post-hearing briefs. The hearing is currently scheduled to end on June 4, 2021. Accordingly, the current decision due date is July 4, 2021.

OBJECTION TO PREHEARING ORDER

41. 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).

SERVED on the date of mailing.

/s/

Jane Doe
Administrative Law Judge
Office of Administrative Hearings