

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 S.W., Student, by and through Parents J.P.
& M.T.

4 Petitioners

5 v.
6 The Odyssey Preparatory Academy, Inc.
7 Respondent

No. 24C-DP-001-ADE

**ADMINISTRATIVE LAW JUDGE
DECISION**

8 **HEARING:** September 19, 2023

9 **APPEARANCES:** Petitioners did not appear. Respondent The Odyssey Preparatory
10 Academy, Inc. was represented by Jessica Sanchez.

11 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

12 **FINDINGS OF FACT**

13 1. On or about July 3, 2023, Petitioners filed a Due Process Complaint. The
14 matter was originally set for hearing on August 17, 2023.

15 2. Petitioners were permitted to amend the Due Process Complaint, which was
16 accepted on August 14, 2023.

17 3. As a result of the amendment a prehearing conference was scheduled to
18 convene on September 7, 2023, and the due process hearing was continued to
19 September 19, 2023.

20 4. During the September 7, 2023 prehearing conference, Parent was adamant
21 she was prepared to present her case during the September 19, 2023 hearing. The
22 Administrative Law Judge explained the process in detail and outlined the disclosure
23 deadline.

24 5. On September 8, 2023, the Administrative Law Judge issued an order
25 including the issues discussed during the prehearing conference including the disclosure
26 deadline and provided a Google Meet link to connect to the September 19, 2023 hearing.

27 6. At 9:50 p.m. on September 11, 2023, the day before the disclosure
28 deadline, Parent submitted a motion to continue the due process hearing indicating she
29 was in the process of hiring an attorney to assist with this matter. Parent failed to copy
30 counsel for Respondent School District on the filing.

1 7. On September 12, 2023, Respondent School District submitted its witness
2 list and exhibits as required. Petitioners did not submit any disclosure.

3 8. On September 13, 2023, the Administrative Law Judge caused the motion
4 to continue to be forwarded to counsel for Respondent School District for a response.

5 9. On September 13, 2023, Respondent School District submitted an objection
6 to the motion to continue.

7 10. On September 14, 2023, the Administrative Law Judge denied the motion
8 to continue as it failed to establish good cause for a continuance.

9 11. Petitioners failed to appear at the hearing. The tribunal waited 30 minutes
10 beyond the scheduled start time, but no one appeared for Petitioners.

11 12. At no time prior to or since the hearing was scheduled to convene did
12 Petitioners submit an advisement that they had technical difficulties connecting to the
13 hearing.

14 **CONCLUSIONS OF LAW**

15 1. A parent who requests a due process hearing alleging non-compliance with
16 the IDEA must bear the burden of proving that claim.¹

17 2. The standard of proof is “preponderance of the evidence,” meaning evidence
18 showing that a particular fact is “more probable than not.”²

19 3. Therefore, in this case Petitioners bear the burden of proving by a
20 preponderance of evidence that Respondent violated the IDEA through the alleged actions
21 or inactions.

22 4. By failing to appear at the hearing, Petitioners did not meet the burden to
23 present evidence in support of the Due Process Complaint. See A.A.C. R2-19-119.

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27 ¹ *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

28 ² *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279
29 (1993) quoting *In re Winship*, 397 U.S. 358, 371-72 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437,
30 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

ORDER

Based on the findings and conclusions above, **IT IS HEREBY ORDERED** that that the relief requested in the Due Process Complaint is **denied** as set forth above and Petitioners' Complaint is dismissed with prejudice.

Done this day, September 28, 2023.

/s/ Tammy L. Eigenheer
Administrative Law Judge

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a HUDS court of the United States. Pursuant to Arizona Administrative Code § R7-2-405(H)(8), any party may appeal the decision to a court of competent jurisdiction within thirty-five (35) days of receipt of the decision.

Transmitted by either mail, e-mail, or facsimile to:

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By: OAH Staff