BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015040382
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND GRANTING MOTION TO BIFURCATE ISSUES AND SETTING NEW HEARING DATES
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT	

On June 1, 2015, a telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings. Surisa Rivers and Sarah Gross, Attorneys at Law, appeared on behalf of Student. Jabari Willis, Attorney at Law, appeared on behalf of Santa Monica-Malibu Unified School District. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Motion to Bifurcate. During the prehearing conference, the parties discussed District's pending motion concerning bifurcation of Student's issues. The ALJ deferred ruling on the motion, because District was completing an amended reply to Student's opposition, which District filed on June 1, 2015, following the prehearing conference.

Motion to Bifurcate

Student's complaint alleges that District had an obligation to provide Student with a FAPE in March 2013 when Student was 20 years old. Student's complaint alleges various procedural and substantive FAPE violations during the period of March 2013 through March 2015.

District contends that it had no responsibility for Student's special education program in March 2013, because in June 2012, when Student was a non-conserved, 19-year-old twelfth grader, he voluntarily withdrew from, and never returned to, the District. District moves to bifurcate Student's issues to have the threshold of issue of District's responsibility for providing Student with a FAPE resolved before a hearing on Student's procedural and substantive FAPE issues.

Student opposed District's motion, contending that Student did not voluntarily withdraw from the District in June 2012, that he continued to seek a FAPE from District, and that District was obligated to provide Student a FAPE between March 2013 and March 2015.

The federal and state law pertaining to special education due process administrative proceedings does not contain a specific reference to the procedure of bifurcating issues for trial. While certain sections of the Administrative Procedures Act do not apply to special education proceedings, OAH looks to them for guidance. Pursuant to the APA, such authority resides in the discretion of the ALJ, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Generally OAH will only bifurcate a hearing when the resolution of a threshold question will determine whether pending issues remain to be determined. In such a situation, bifurcation furthers judicial economy. The issue of District's obligation to provide a FAPE to Student in March 2013 is a threshold jurisdictional issue that can be efficiently resolved in an evidentiary proceeding that should not take more than one day. The prompt determination of District's obligation to provide a FAPE would further judicial economy by reducing or eliminating the number of witnesses, and time for witness examination and cross-examination on issues related to the offer of FAPE and compensatory education if District is determined not to be responsible for providing a FAPE to Student during all or a portion of the school years at issue.

Therefore, after evaluating the facts in this case, District's request to bifurcate issues is granted.

Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of June 1, 2015.

2. Hearing Dates, Times, and Location. The hearing on the threshold issue of District's obligation to provide Student a FAPE shall take place on June 10 and 11, 2015 at 9:30 a.m., continuing day to day, Monday through Thursday as needed at the discretion of the ALJ at the District's offices located at 1651 16th Street, Santa Monica, California 90404, unless otherwise ordered.[1]

The hearing date of June 15, 2015 is vacated.

If Student prevails on the sole issue to be decided in the hearing on June 10 and 11, 2015, then a hearing on Student's FAPE issues shall be continued to August 4 and 5, 2015, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. with the exception of the

[1] At a minimum for the hearing, the room shall be accessible and have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties and the ALJ have drinking water and tissue available to them.

first day of hearing, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered.

District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. A witness will not be regarded as unavailable for purposes of showing "good cause" to continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issues and Proposed Resolutions. The sole issue at the due process hearing on June 10 and 11, 2015 is listed below:

Did District have an obligation to provide Student a FAPE, beginning on March 27, 2013 through March 27, 2015?

Student's proposed resolution is a determination that District had an obligation to provide Student a FAPE.

The issues at the due process hearing on August 4 and 5, 2015, are listed below:

a) Did District fail to provide Student a free appropriate public education between March 27, 2013 and March 27, 2015 by:

i) changing Student's placement without his knowledge or consent?

ii) exiting Student from special education without assessing Student first?

iii) failing to comply with stay put requirements?

iv) failing to hold annual IEP meetings in June 2013 and June 2014?

v) failing to provide appropriate specialized academic instruction?

vi) failing to provide appropriate speech and language therapy?

vii) failing to assess in all areas of suspected disability, including upon Student's request? And

viii) failing to provide an appropriate transition plan.

Student's proposed resolutions are:

a) determinations that District denied Student a FAPE as to each issue and that Student is the prevailing party;

b) District funding of Student's enrollment in the necessary courses to obtain his high school diploma through Santa Monica College; and

c) compensatory education services, including individual academic tutoring, educational therapy, and speech and language therapy to be provided by a certified nonpublic agency.

4. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

The parties are encouraged to review and shorten their exhibit lists, and stipulated to meet and confer by June 5, 2015, to attempt to reach agreement on a single set of proposed, legible, non-duplicative exhibits.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties stipulated to meet and confer by June 5, 2015, to attempt to reach agreement on the scheduling of witnesses, including the time the testimony of each witness is expected to take. District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

6. Scope of Witness Examination. After the first direct and cross-examinations, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination.

7. Telephonic Testimony. Whether a witness may appear by telephone 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 telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness shall provide the proposed witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing; and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness, and the witness to hear objections and rulings. No party requested telephonic testimony and no witness will be heard by telephone unless all these requirements have been fulfilled.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witnesses shall conduct themselves in a professional and courteous manner at all times. Cellular phones, pagers, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

10. Compensatory Education/Reimbursement. Any party seeking reimbursement of expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of expenditures, as part of its case in chief. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Special Needs and Accommodations. A Spanish language interpreter is required for June 10, 2015, only.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for

reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

12. Hearing Closed To the Public.

13. 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 should 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.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT IS REACHED AFTER 5:00 P.M. 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. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received 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 the evening prior to the hearing or the morning of the hearing.

14. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: June 05, 2015

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings