BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013050272 ORDER FOLLOWING PRE-HEARING CONFERENCE OF AUGUST 5, 2013

On August 5, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Paul H. Kamoroff, Office of Administrative Hearings (OAH). Student's father (Father) appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of the Los Angeles Unified School District (District). Victor Ramos, Spanish language interpreter, attended the PHC.[1] The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on August 13, 14 and 15, 2013, at 9:30 a.m., and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall take place at the OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406.

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.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

a) Whether the District denied Student a free appropriate public education (FAPE) from August 2011, to the present by:

[1] At the beginning of the PHC, Father informed the ALJ that he did not require Spanish language translation services. Following this statement, the court appointed interpreter, Mr. Ramos, remained present during the PHC by did not provide translation services.

i) Failing to provide an appropriate transition plan and transition goals?

ii) Failing to provide two hours per week of speech and language services?

iii) Failing to provide intensive occupational therapy services?

iv) Failing to provide appropriate assistive technology?

b) Whether the District procedurally denied Student a FAPE by failing to ensure meaningful parent participation at the April 10, 2013 Individualized Education Program (IEP) meeting, by predetermining the IEP offer?

c) Whether the District denied Student a FAPE by awarding him a high school diploma?

3. 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.

Student failed to include a list of exhibits in his prehearing conference statement and to serve the District an exhibit binder, in violation of OAH orders dated May 8, 2013, and June 19, 2013. Student will therefore be limited to the exhibits included in the District's amended exhibit list, dated August 2, 2013, subject to the District submitting such exhibits during the due process hearing. Notwithstanding the foregoing, the District has agreed to make the following exhibits available for Student during the due process hearing:

i) Individualized Education Program (IEP), dated April 7, 2011;
ii) IEP Amendment, dated May 13, 2011;
iii) IEP, dated April 11, 2012, and;
iv) IEP, dated April 11, 2013.

The District represents that it has served its evidence binders on the Student 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.

4. 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.

Student failed to include a list of witnesses in his prehearing conference statement, in violation of OAH orders dated May 8, 2013, and June 19, 2013. During the PHC, Father stated that Student does not require any witnesses, other than himself. Student's witnesses will therefore be limited to direct examination of Father and cross-examination of any witnesses who are called to testify the by the District, pursuant to the District's witness list dated August 1, 2013.

Neither the District or the Student has identified an expert witness for this matter.

The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

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 shall attempt to reach agreement on a witness list for the first day of hearing. The 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.

5. 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.

6. Telephonic Testimony. At present, neither party has requested 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 witness will be heard by telephone unless all these requirements have been fulfilled.

7. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, the Student is the petitioning party. Accordingly, the order of presentation of evidence shall be as follows: Student shall present his case-in-chief followed by the District. If a witness is to be called by more than one party, each party shall ask their questions of the witness so that the witness does not need to return for testimony.

8. Motions. At present no prehearing motions are pending or contemplated. 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 August 5, 2013.

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

10. 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.

11. 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.

12. Special Needs and Accommodations. A Spanish language interpreter for the Student's mother is required.

13. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public.

14. 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.

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

IT IS SO ORDERED.

Dated: August 05, 2013

/s/
PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings