BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>YUCAIPA-CALIMESA JOINT UNIFIED SCHOOL DISTRICT, AND SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS. | OAH CASE NO. 2013100045<br><br>ORDER FOLLOWING PRE-HEARING CONFERENCE |

On April 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Sabrina Kong, Office of Administrative Hearings (OAH). Elizabeth Eubanks and Maronel Barajas, Attorneys at Law, appeared on Student's behalf. Vivian Billups, Attorney at Law, appeared on Yucaipa-Calimesa Joint Unified School District's and San Bernardino County Superintendent of School's (referred to jointly as Respondents) behalf. 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 April 23, 24, 28, 29, 30, May 1, and 5, 2014, and continue day to day, Monday through Thursday, at the discretion of the ALJ, until completed. The hearing shall be held at the District's office located at 35912 Avenue H, Yucaipa, CA 92399. The hearing shall begin each day at 9:30 a.m. and end at 4:30 p.m. on all days unless otherwise ordered, with the exception of the first day of hearing which shall begin at 1:30 p.m.

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. The issues at the due process hearing are listed below.[1]

[1] Student's counsel informed ALJ that Student has abandoned the issues of whether Respondents denied Student a free appropriate public education (FAPE) from September 27, 2011 to January 15, 2014 by failing to give proper written notice following the September

Did Yucaipa-Calimesa Joint Unified School District's and San Bernardino County Superintendent of Schools deny Student a FAPE from September 27, 2011 to January 15, 2014[2] by:

(a) Failing to include Parents in the February 7, 2012 IEP team meeting;

(b) Failing to consider Parents' concerns at the February 29, 2012 and May 28, 2013 IEP team meetings;

(c) Failing to assess: (i) Student's assistive technology needs? (ii) Student's functional vision needs? (iii) Student's needs for instruction in Braille? (iv) Student before referring Student to the California School for the Blind;

(d) Failing to offer appropriate placement and services to Student at the September 27, 2011, December 6, 2011, February 7, 2012, February 29, 2012, January 22, 2013, April 28, 2013 and May 28, 2013 IEP team meetings including: (i) failing to provide behavior support; (ii) failing to provide AT; (iii) failing to provide appropriate instruction in Braille for mastering reading and math standards; (iv) failing to provide a qualified Braille instructional aide; and (v) failing to provide orientation, mobility or vision impairment services during the 2012 and 2013 extended school year;

(e) Failing to include measurable goals in the areas of orientation and mobility?

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. The parties represent that they have served 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.

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27, 2011, December 6, 2011, February 7, 2012, February 29, 2012 and May 28, 2013 individualized education program (IEP) team meetings.

[2] Respondents' counsel disagreed with the timeframe of the hearing arguing that the appropriate timeframe for evidence considerations should be the period from January 15, 2012 to January 15, 2014, and not September 27, 2011 to January 15, 2014. ALJ will allow briefing on this issue to be filed by 5:00 p.m. on April 16, 2014.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials.

The parties discussed the possibility of introducing a video during hearing. Should hearing proceed on District's premises, District has agreed to provide equipment for video viewing in the format requested by Student's counsel at the April 16, 2014 meet and confer. However, the party offering the video shall be ultimately responsible for ensuring that the appropriate equipment is available. Whether or not any such video may or may not be admissible as evidence shall be reserved for ruling at the hearing.

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 exchange of the final witness list at least five business days prior to the hearing, April 16, 2014, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties are ordered to meet and confer by April 16, 2014, as to the schedule of witnesses and present a witness schedule on the first day of hearing pursuant to the example below, to 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.

Example:

The following witnesses will be called to testify on April 23, 2014:

1. Jane Smith at 10:00 a.m.
2. Bob Jones at 11:00 a.m.

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 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. 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.

Respondents' motion to allow Nancy Dean to testify telephonically is granted since good cause was shown. Respondents shall provide Ms. Dean with a complete exhibit binder from each party, 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.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits at least five business days prior to the hearing, April 16, 2014.

8. Order of Presentation of Evidence. Student's evidence followed by District's evidence. However, witnesses to be called by both sides shall be questioned on all issues when first called.

9. Motions. No pretrial motions are pending or contemplated other than Student's Motion for Change of Hearing Venue to Student's Counsel's Office. Student's counsel indicated such motion may be necessary for the convenience of Parent and others, especially if Parent's testimony is requested. If Student decides to request a change of venue, such motion shall be filed by 5:00 p.m. on April 16, 2014.

Student's counsel also requested an opportunity to file a trial brief. ALJ ordered that if any party files a trial brief, such briefs will be filed by April 17, 2014 at 10:00 a.m. and should be no longer than 15 pages.

Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the April 14, 2014 prehearing conference.

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

11. 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.

12. 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

14. Hearing is Closed to the Public.

15. 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: April 14, 2014

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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings