

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
HEMET UNIFIED SCHOOL DISTRICT,	OAH CASE NOS. 2012090499 and
v.	2012110300
PARENT ON BEHALF OF STUDENT,	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012110702
v.	
HEMET UNIFIED SCHOOL DISTRICT.	ORDER FOLLOWING PRE-HEARING CONFERENCE

On January 14, 2013, a telephonic pre-hearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH). Peter A. Sansom, Attorney at Law, appeared on behalf of Hemet Unified School District (District). Ralph O. Lewis, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. At the joint request of the parties, and good cause shown as set forth below, Student's case number 2012100702 (Student's case) is consolidated with previously consolidated case numbers 2012090499 and 2012110300 (District's case). The primary case number in the consolidation of the three cases is OAH case number 2012090499. Pursuant to stipulation between the parties, the PHC in the consolidated cases was held on January 14, 2013. Accordingly, the PHC set for February 4, 2013, in Student's case number 2012100702 is vacated and this PHC Order applies to the consolidated cases.

The hearing on the three consolidated cases shall take place on February 7, 2013, from 9:30 a.m. to 5:00 p.m., February 11, 2013 from 1:30 p.m. to 5:00 p.m., February 12, 13, 14, 19, 20, 21, 26 and 27 from 9:30 a.m. to 5:00 p.m. Should Student's attorney be unable to proceed on any of these days due to his health, Student's attorney may request an adjustment in this schedule upon evidence demonstrating good cause for any further continuance. The hearing shall take place at the District's offices located at 1791 West Acacia, Hemet, California, 92545.

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. Mediation Date, Time, and Location. The parties’ joint request to participate in mediation in lieu of a resolution meeting is granted. (Education Code section 56501.5 subdivision (b).) Mediation shall take place on January 24, 2013 at 9:30 a.m. at the District offices located at 1791 West Aracia, Hemet, California, 92545. To the extent the parties requested different mediation dates via letter dated January 15, 2013, those requests are denied. OAH cannot accommodate mediation requests with less than 48 hours notice.

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

- a) Did the April 13, 2012, individualized education program (IEP) offer Student a free appropriate public education (FAPE) in the least restrictive environment (LRE)?
- b) Was Student denied a FAPE because the psychoeducational evaluation dated February 11, 2011, the speech and language evaluation dated October 28, 2011, and augmentative communication evaluation dated October 15, 2010, were not properly conducted?
- c) Did District violate the procedural requirements of the IDEA, specifically:
 - 1) Did District predetermine Student’s placement for all IEP’s within the statute of limitations since April 28, 2008?
 - 2) Did District fail to provide appropriate goals and objectives during the relevant time period?
 - 3) Did District allow Parents to participate in the IEP process during the relevant time period?
 - 4) Did District include the required persons at IEP team meetings during the relevant time period?
- d) Did District fail to offer appropriate placement for Student, specifically:
 - 1) Was District’s staff adequately trained?
 - 2) Did District provide an appropriate classroom for Student?

- 3) Is District required to provide 40 hours of services per week provided by CARD?
- 4) Did District provide appropriate levels of speech and language services, vision therapy and occupational therapy?

District seeks an order finding District's assessments were appropriate and that the April 13, 2012 IEP offered Student a FAPE in the LRE. Student seeks private school placement, CARD services, non-District speech and language, occupational therapy, vision therapy and assistive augmentative technology services at District expense, reimbursement for costs and expenses for placement, services and assessments paid by Parents, and compensatory education.

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.

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. Each party shall provide a curriculum vitae or resume' for any witness offering expert opinion. 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 pre-hearing 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 ordered to meet and confer by February 4, 2012, as to the schedule of witnesses. The parties have agreed 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. The District shall have witnesses available in case agreement on a witness list is not reached. The witness schedule will be finalized at the commencement of the due process hearing.

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.

Student identifies three witnesses by first name only. This designation is insufficient to meet the disclosure requirements of Education Code section 56505, subdivision (e)(7). The parties shall meet and confer on or before January 24, 2013, in order to further identify Student witnesses “Stacy,” “Bret,” and “Marina” and determine whether District will make those witnesses available.

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.

7. Timely Disclosure of Witnesses/Exhibits. The parties have timely disclosed witnesses and exhibits pursuant to Education Code section 56505, subdivision (e)(7).

8. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. District shall present its case first, followed by Student’s case. After the first direct and cross-examination, each party shall be limited to only those matters raised in the immediately preceding examination. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need only appear and testify once.

9. Motions.

a) Student’s Motion to Consolidate: Student filed a motion to consolidate Student’s case number 2012100702 with District consolidated case numbers 2012090499 and 2012110300. District agreed to the consolidation. District’s case and Student’s case involve common questions of law and fact, many of the same witnesses and much of the same documentary evidence such that consolidation will further the interests of judicial economy. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

b) District’s Observation of Student: On December 26, 2012, OAH issued an Order stating “Within 20 days of the date of this order, Student shall permit Dr. Laura Schreibman to observe Student receiving CARD services in his private school placement and at home for

a total period of up to two hours in each setting.” As of January 14, 2013, Student’s Parents have not made Student available for observation. Accordingly, the parties shall meet and confer on or before January 24, 2013, and set the date(s) and time(s) for District’s observation.

c) No other pretrial motions are pending or contemplated. 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 prehearing conference of January 14, 2013.

10. Stipulations. Stipulations to pertinent facts, including the qualifications of witnesses supported by curriculum vitae or resume’, 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 Closed To the Public. The 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.

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

IT IS SO ORDERED.

Dated: January 15, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings