

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDAL Unified School
District.

OAH CASE NO. 2012101082

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On January 14, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Hamlet Yarianian, advocate, appeared on behalf of Student. Howard J. Fulfroft, Esq. appeared on behalf of Glendale Unified School District. The PHC was recorded.

As a preliminary matter, the parties indicated that they had agreed on the material terms of a final settlement to conclude the matter, were preparing settlement documents, and expected to file a withdrawal of the request for due process hearing with OAH prior to commencement of the hearing. The PHC was completed, and the hearing is to go forward as scheduled if the request for due process hearing is not withdrawn.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on January 22-24, 2013, continuing day to day thereafter, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m. and end at 4:30 p.m., unless otherwise ordered.

The hearing shall take place at:

Glendale Unified School District
223 North Jackson Street, Room 206
Glendale, CA 91206

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. The complaint states the following issues:

- a) Did District deny Student a free appropriate public education (FAPE) by failing to offer placement in the least restrictive environment (LRE)?
- b) Did District deny Student a FAPE by failing to implement Student's October 25, 2011 IEP, and specifically by failing to appropriately modify Student's curriculum and assignments?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using the numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (i.e., each party should make four copies of its exhibits). Each party shall serve its exhibit binder on the other no later than January 17, 2013. 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.

The parties are ordered to meet and confer by no later than January 17, 2013 regarding the schedule of witnesses. Each party shall identify the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence, and shall provide a time estimate of the length of each witness's direct examination testimony, and the subject matter and scope of the witness's testimony. 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. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the

witness schedule. 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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. The parties indicated that they do not anticipate the need for any telephonic testimony at the hearing.

7. Motions. No 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 January 14, 2013 prehearing conference.

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. Each party indicated that it does not anticipate the need for special accommodation for any witness or party, or for translation services.

12. Hearing Open/Closed To the Public. At the request of the parent, the hearing will be open to the public. Recording will be permitted if a stipulation is placed on record at commencement of the hearing that ALJs recording is the only official version that may be used for any purpose in connection with the due process proceeding or any appeal thereof.

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.

Dated: January 16, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings