

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PETALUMA CITY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012120556

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 14, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Loren Soukup, Attorney at Law, appeared on behalf of the Petaluma City School district (District).¹ Mother appeared on behalf of Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on January 22 through 23, 2013 at the District's offices located at 200 Douglas Street, Petaluma, California 94952.² The hearing shall begin at 1:30 p.m. on the first day of hearing and at 9:30 a.m. on the second day of hearing, unless otherwise ordered.

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.

¹ Ms. Soukup specially appeared for attorney Carl Corbin who will represent the District at the hearing.

² The District is responsible for ensuring that the room meets OAH specifications. At a minimum, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for District's representatives; (2) one table for Student's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. A room with one large conference table is not suitable. If a suitable room is not available for any of the hearing days, the District shall immediately notify OAH and the parties and propose a different location. Fresh water and tissue shall be available in the hearing room at all times.

2. Issue and Proposed Resolution. The issue at the due process hearing is listed below:

Issue One: Did the District's psycho-educational assessment of Student dated October 4, 2012, conducted by school psychologist Sheila Dowds Codoner, comply with all legal requirements such that the District is not required to fund an independent educational evaluation (IEE)?

District's Proposed Resolution: The District is seeking a ruling that the psycho-educational assessment was appropriate, and that the District is not required to fund any IEE request made on behalf of Student.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The District shall use numbers to identify exhibits, and the Student shall use letters. The parties shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, D-1, D-2 or S-A, S-B). 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. 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. Exhibit binders shall be exchanged five business days prior to the hearing in accordance with Education Code section 56505, subdivision (e)(7), unless the parties agree to a later date. The District has provided Student with a copy of its exhibit binder. Student represents that he will provide the District with his binder by close of business, January 14, 2013.

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 may not be admitted into evidence at the hearing, unless good cause is shown as to why it was not previously exchanged. The parties shall be prepared to make such an offer of proof.

The ALJ shall determine whether an exhibit is to be admitted into evidence. Only exhibits relevant to the issues previously stated in this order shall be admitted, unless used for impeachment purposes. The fact that an exhibit is placed in an exhibit binder does not guarantee its admission.

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, and at the discretion of the ALJ.

The parties are advised that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Parties shall be prepared to make an offer of proof, if asked, as to why a specific witness's testimony is necessary.

The District represents that it expects that the testimony of its witness to be completed by the end of the first day of hearing. Student will have his witness available to testify at the start of the second day of hearing and anticipates needing approximately two and a half hours to complete the direct examination. In the case of witnesses who have professional licenses and credentials, it is strongly recommended (but not ordered) that the party calling such witnesses be prepared to present copies of their *curriculum vitae* (CVs) or resumes as exhibits, and exchange them with the other party.

5. Scope of Witness Examination. After the first direct and cross-examination, 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. 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. Both of the identified witnesses will be testifying in person.

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 this prehearing conference, unless otherwise ordered.

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

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 during the hearing unless permission to the contrary is obtained from the ALJ.

10. 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.

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

12. Hearing Closed To the Public. At the request of the Student, the hearing shall be 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. ON JANUARY 18, 2013, 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 and 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 14, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings