

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SANTA CLARA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012120574

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 16, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Troy Taira, Office of Administrative Hearings (OAH). Rodney Levin, Attorney at Law, appeared on behalf of Santa Clara Unified School District (District). Attempts to contact Parent were unsuccessful.¹ The PHC was recorded. Both parties filed PCH statements.

Parent is encouraged to refer to the guidebook available on OAH's website, www.dgs.ca.gov/oah, called, "Understanding Special Education Due Process Hearings." Parent may also request a copy of the guidebook by calling OAH at (916) 263-0880. Parent's PHC statement contained a number of allegations against District and requests for relief. Parent may request relief by filing a separate request for due process hearing (complaint). For this case, the ALJ will only address the issues and proposed resolutions contained in District's amended complaint filed on December 27, 2012.²

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

¹ The PHC was scheduled for January 16, 2013, at 1:30 p.m. The ALJ trailed the PHC to begin at 3:00 p.m. due to conflicting PHCs scheduled at the same time. Parent notified OAH she was unavailable at 3:00 p.m. The ALJ adjusted the PHC to begin at 2:00 p.m. Parent notified OAH that she was only available at 1:30 p.m. The ALJ called Parent at 1:30 p.m. and 1:45 p.m. leaving messages requesting she contact OAH and that the PHC would commence at 2:00 p.m. The ALJ called Parent at 2:00 p.m. Parent did not answer and the ALJ proceeded with the PHC.

² District filed an amended complaint on December 21, 2012, which was considered as a motion to amend. On December 27, 2012, OAH deemed District's amended complaint filed and the statutory time lines were reset as of that date.

1. Hearing Dates, Times, and Location. The hearing shall take place on January 24 and 25, 2013 at the District's offices located at 1889 Lawrence Road, Santa Clara, CA 95051.³ The hearing shall begin at 9:30 a.m. unless otherwise ordered. The parties and the ALJ may discuss additional hearing days at the commencement of the hearing if needed.

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) Did District provide Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE) from October 2011 to the present, pursuant to its May 26, 2011 individualized education program (IEP) and amendments thereto, during times when Student was a resident of District; and

b) May District reassess Student in accordance with its November 28, 2012 and December 14, 2012 assessment plans without parental consent?

For proposed resolutions, District requests an order that it provided Student a FAPE in the LRE from October 2011 to the present, pursuant to its May 26, 2011 IEP and amendments thereto; and an order that it may reassess Student in accordance with its November 28, 2012 and December 14, 2012 assessment plans without parental consent.

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. 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.

³ At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water available to them.

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 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, and at the discretion of the ALJ.

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. 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. Neither requests 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 request in advance 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.

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.

8. Order of Presentation of Evidence. As the party filing the complaint, District will present its evidence first and then Student will present his evidence.

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by good cause as to why the motion was not made prior to or during the prehearing conference of January 16, 2013.

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 interpreter services.

14. Hearing Closed To the Public. The hearing will be closed to the public. Should Parent desire to open the hearing to the public, Parent shall immediately notify OAH and District.

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 17, 2013

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings