

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2013010553

ORDER FOLLOWING PRE-HEARING
CONFERENCE ON EXPEDITED
ISSUE

On February 6, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Eileen M. Cohn, Office of Administrative Hearings (OAH) on the expedited issue only. Karen Key Brent, Attorney at Law, appeared on behalf of Student. Jack B. Clarke, Jr, Attorney at Law, appeared on behalf of Victor Valley Union High School District (District). The PHC was recorded.

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

1. Joint Motion to Unexpedite Hearing Denied. The parties' joint motion to unexpedite the hearing is denied. The ALJ ordered Student's issue three only, as clarified below, which appeals District's manifestation determination, to move forward on an expedited basis, as required by the IDEA.

2. Hearing Dates, Times, and Location. The hearing on the expedited issue only shall take place on Tuesday, February 12, 2013, at 11 AM and Wednesday, February 13, 2013, at 9 AM, continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall end each day at 5 PM.

The hearing shall take place at District's offices located at 16350 Mojave Drive Victorville, CA 92392. District shall provide a hearing space that can accommodate a courtroom set-up with one table for the ALJ, a table for the witness, adjacent to the ALJ and a table for each party facing the ALJ. The District shall be prepared to provide Internet access if it is required so that the ALJ can communicate to OAH's technical support team.

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.

3. Issues and Proposed Resolutions. The issues at the expedited due process hearing are listed below. The issues, as framed, are consistent with the regulations as set forth in 34 C.F.R. § 300.530 (2006). As part of the expedited proceeding, the appropriateness of Student's IEP will not be considered.

A. Whether District improperly determined at the manifestation determination meeting of November 14, 2012, that Student's behavior, which was the subject of disciplinary action, was not a manifestation of his disability, due to its inadequate consideration all relevant information about Student, including assessments, parent information, observations and his IEP and placement, which taken together, should have instead resulted in a determination that the conduct was either a direct and substantial relationship to the Student's disability, or the direct result of District's failure to implement his IEP.ⁱ

B. Whether, as a result of the manifestation determination meeting of November 14, 2013, where District decided to remove Student from his current educational placement, District failed to provide behavior intervention services and modifications, designed to address the behavior violation so that it does not occur again.

C. Whether, as a result of the manifestation determination meeting of November 14, 2013, where District removed Student from his current educational placement, District failed to provide Student educational services to enable him to participate in the general education curriculum, although in another setting, and to progress toward meeting his goals set out in his IEP.

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. 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. 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 stipulated and are ordered to meet and confer prior to the hearing as to the identity and schedule of witnesses. 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. The District shall have witnesses available in case agreement on a witness list is not reached. 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 witness schedule will be finalized at the commencement of the due process hearing.

The parties are order to shorten their witness testimony so that the hearing may be completed within the 1.5 day time frame ordered by the ALJ. Evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

6. Scope of Witness Examination. Each witness shall appear once, except for rebuttal. 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.

7. Telephonic Testimony. No request has been made for telephonic testimony.

8. Order of Presentation of Evidence. This matter is limited to the expedited issues stated above. The ALJ shall exclude testimony that is not relevant to the expedited issues. To the extent practicable the ALJ will accommodate the Student's order of testimony, but will not do so, if it will require an undue consumption of time, or contradicts, number 6 above.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form, the first day of hearing.

10. Trial briefs, including opening and closing written argument. Given the expedited nature of the hearing, and the time allotted for oral testimony, the parties are encouraged to reduce opening or closing statements, including arguments regarding pertinent areas of law, to written form. To timely complete witness testimony, the ALJ may consider a request for a short continuance to hear oral or written closing arguments.

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. The parties have not requested accommodations.

14. Hearing Closed To the Public. The hearing shall be 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: February 08, 2013

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings

ⁱ As part of the expedited hearing, only the implementation of the IEP, not its appropriateness, is relevant. Student's claims that District failed to adopt a behavior plan prior to the manifestation hearing, are relevant to establish the information known to the District about Student in its determination that his behavior was not a manifestation of his disability.