

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012110239

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On February 11, 2013, a recorded, telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Student's mother (Parent) represented Student. Julie Hall-Pamaneno, LAUSD Director of Litigation Research, represented the Los Angeles Unified School District (District). The PHC was recorded.

District timely filed a PHC statement. Student failed to file a PHC statement. Parent explained that she failed to file Student's pre-hearing conference statement because she believed the matter would be resolved in ongoing settlement discussions. The matters required to be disclosed in Student's pre-hearing conference statement were instead discussed at the pre-hearing conference, and Parent was advised that any failure to adhere to future deadlines, including the deadline for exchange of witness lists and documents, would be grounds for the exclusion of evidence or other sanctions.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on February 25-28, 2013 at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing shall begin at 1:30 p.m. on February 25 and at 9:30 a.m. on February 26-28.

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. The issues at the due process hearing are those alleged in the due process complaint, as clarified by the parties and the ALJ at the PHC:

- a) Whether the District's offer of placement at Vista School, a non-public school (NPS), in Student's March 15, 2012 individualized education program (IEP) failed to provide Student with a FAPE in the least restrictive environment.

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. Each party will serve its exhibit binder on the other party no later than Friday, February 15, 2013. 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). 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.

In its PHC statement, District disclosed the documents it intends to present at hearing. During the PHC, Parent stated that Student would present documents from a Kaiser medical clinic demonstrating Student's completion of classes addressing Student's behavior. Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list and exchanged with the other party on or before February 15, 2013 will not be admitted into evidence at the hearing unless the other party agrees, and its requested admission is supported by a written declaration under penalty of perjury setting forth good cause for why the document was not previously disclosed and exchanged, and the ALJ rules that the document is admissible.

4. Witnesses. In its PHC statement, District disclosed the witnesses it intends to call at hearing. During the PHC, Parent stated that Student expected to call Parent, student's stepfather, Joel Castro, and Student's babysitter, Betzy Espinoza to testify regarding Student's ability to control his behavior in a group setting. Each party no later than February 15, 2003 will serve on the other party the final list of witnesses that it plans to present at the hearing. The District has agreed to cooperate in producing District employee witnesses without the need for subpoena. 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 timely disclosed in its witness list except if the other party agrees, and 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 Friday, February 15, 2013, regarding the 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 parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence. 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 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. Each party represented that it does not anticipate presenting any 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.

7. Timely Disclosure of Witnesses/Exhibits. To allow the parties to devote their resources to completion of their anticipated settlement, the parties shall be required to disclose their witnesses and exhibits no later than Friday, February 15, 2013, pursuant to Education Code section 56505, subdivision (e)(7), which requires disclosure of witnesses and exhibits at least five business days prior to the hearing.

8. Motions. No prehearing motions are pending, and each party represented that it does not contemplate bringing any motions in limine or other motion. 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 February 15, 2013.

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

10. Order of Presentation of Evidence. At the PHC, the ALJ indicated that, to promote the prompt and orderly conduct of the hearing, the order of presentation of evidence that is usually followed in a student-filed matter would be altered in this instance so that the District would present its evidence supporting the placement offered by District first at the hearing, to be followed by Student's presentation of evidence disputing the placement. However, on further consideration of the burden of proof in this matter, wherein Student bears the burden of establishing by a preponderance of the evidence that District's placement failed to provide Student with a FAPE in the least restrictive environment, the alteration of the usual order of presentation is cancelled, and Student shall present Student's evidence first, followed by District's response to Student's presentation.

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. A student seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education as part of student's case in chief.

13. Special Needs and Accommodations. Each party represents that no special accommodation is required for any witness or party.

14. Hearing Closed To the Public. The hearing will be closed to the public.

15. Settlement. The parties are encouraged to continue working together to complete 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. 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 AND SHALL 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. 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 11, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings

