

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAKE ELSINORE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012080373

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 13, 2013¹, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Judith L. Pasewark, Office of Administrative Hearings (OAH). Ralph O. Lewis, Attorney at Law, appeared on behalf of Parents, on behalf of Student (Student). Cynthia Vargas, Attorney at Law, appeared on behalf of Lake Elsinore Unified School District (District). The PHC was not recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on February 19, 20, 21, 26, 27, 28, March 4, 5, and 6, 2013, at the District's offices located at 545 Chaney Street, Lake Elsinore, CA 92530. The hearing shall begin at 10:00 a.m. and end at 4:00 p.m. each day 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.

2. Issues and Proposed Resolutions. It is noted that Student's amended pleadings reference violations of the IDEA during the "statute of limitations time period." Student filed his initial due process complaint on August 14, 2012, thereby creating a two year statute of limitations relating back to August 14, 2010. On January 24, 2011, the parties entered into a written settlement agreement, which contained a release of all claims, including administrative claims, compliance complaints, and all claims implementing regulations of the IDEA and California Education Code, existing as of the date of the agreement. As a result, for purposes of this hearing, the operative period of the statute of limitation on Student's

¹ The PHC was completed on February 18, 2013.

issues is January 25, 2011 through the filing date of Student's amended complaint on December 13, 2012.

The issues at the due process hearing are listed below.

- a) Did the District fail to offer Student a FAPE during but not limited to the 2012-2013 school year, including 2012 ESY, by failing to offer Student an appropriate combination of DIS and classroom setting?
- b) Is Student entitled to reimbursement for an IEE provided by Dr. Robin Morris as well as subsequent observations?
- c) Is Student entitled to compensatory education as a result of the District's failure to provide Student with appropriate services for the period of January 25, 2011 through December 13, 2012?
- d) Did the District fail to provide Student a FAPE by failing to identify all areas of disability or suspected disability between January 25, 2011, and December 13, 2012?
- e) Did the District fail to develop IEP goals for Student between January 25, 2011, and December 13, 2012, which were not vague, measurable and appropriate for Student?
- f) Did the District fail to offer appropriate ESY services between January 25, 2011, and December 2012?

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. The parties represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). 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.

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 February 15, 2013, to schedule the 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 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. 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, unless the opposing party has stipulated that the witness may appear by telephone. 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. Motions. The District's motion in limine to limit witnesses has been discussed between the parties. Whether any witnesses(s) remaining in issue shall testify, shall be determined by the ALJ at hearing. Each party shall be allowed to make an oral record of their arguments and objections at that time. 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.

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. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

12. 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.

13. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Dated: February 13, 2013

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings

