

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100968

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On February 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Valerie Vanaman and Sharon Robinson, of Newman Aaronson Vanaman, Attorneys at Law, appeared on behalf of Student and Parents (Student). Constance Taylor, of Atkinson, Andelson, Loya, Ruud & Romo, P.C., appeared on behalf of Pasadena Unified School District (District). The PHC was 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 25, 26, 27, and 28, 2013** at 1:30 p.m. on the first day and 9:00 a.m. on all remaining days, at **District offices, 351 South Hudson Avenue, Pasadena, CA 91109**, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

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.

(1) At Student’s individualized education program (IEP) meeting of May 9, 2012, did the District deny Student a Free Appropriate Public Education (FAPE) by failing to offer or provide Student with a placement and related services that addressed Student’s cognitive disorder, language delays, and social/emotional issues, which requires a small school setting:

(a) with individual instruction designed for Student’s presentation;

- (b) that is free from interfering outside noise;
 - (c) with acoustically appropriate modifications;
 - (d) with few visual distractions;
 - (e) that uses sound amplification; and
 - (f) with very low ambient noise?
- (2) Did the District predetermine the placement offered at the May 9, 2012 IEP and, in so doing, deny Student's parents the opportunity to meaningfully participate in the IEP process, thus denying Student a FAPE?

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 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 parties are ordered to meet and confer for purposes of agreeing upon a witness schedule, which will be presented to the ALJ at the commencement of the first day of hearing. 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

District is ordered to make employee Valentine J. Sanchez available to testify at 1:30 p.m., February 25, 2013, the first day of hearing. Student is ordered to provide the date and time of the telephonic testimony of Dr. Ellenberg (see paragraph 6, hereinbelow).

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. If a witness is to be called by more than one party, the parties need be prepared to examine the witness when first called. Except on a motion and good cause shown, a witness will appear and testify once.

6. Telephonic Testimony. Student requests that his witness Leah Ellenberg, Ph.D., be allowed to testify via telephone. District does not object. The request is granted, pursuant to Cal. Code Regs., tit. 5, § 3082, subd. (g). Student shall provide the witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing. District 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. Parties represent that they have already exchanged witness lists and exhibits.

8. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues, to be followed by District's presentation of evidence.

9. Motions. In addition to the motions to allow telephonic testimony and recording of proceedings (see paragraphs 6 and 11), the Student moves for orders relative to a number of accommodations and requests, which are ruled upon as follows:

- Denied: District is not ordered to provide a "break-out" room for Student and his counsel. If Student requires privacy for confidential conversations, and a room is unavailable at the hearing site, the ALJ will vacate the hearing room to provide the requisite privacy.
- Denied: District is not ordered to provide Student with access to a copier relative to possible new documents to be used at the hearing. If a party intends on introducing documents that are not in the exhibit binders, the party is ordered to bring copies sufficient to distribute amongst the parties, witness, and ALJ.

- Denied: District is not required to provide Student access to a facsimile machine, a telephone, or the internet.
- Granted: District must provide appropriate sound equipment and/or speaker phone for the telephonic testimony of Dr. Ellenberg, as outlined in paragraph 6.
- Moot: Student withdraws proposed witnesses Edde Kolos and LaVonne Knedel and, therefore, Student no longer requests District assistance in locating the witnesses.

No other 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 the prehearing conference of **February 20, 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, 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.

Student requests the ALJ's permission to record the hearing proceedings and District does not oppose. Student's request to record the Due Process Hearing is granted subject to the following conditions: (1) Student shall turn on and off the recording device at the same time that the ALJ is on and off the record; (2) Student shall not play any part of the recording for a prospective witness; and (3) Student shall not use this recording in any subsequent Due Process Hearing. The recording is not the official record and is permitted as a courtesy.

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 translation services, except as outlined in paragraphs 6 and 9, hereinabove.

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 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 20, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings