

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012120052
v.	
LOOMIS ELEMENTARY SCHOOL DISTRICT,	
LOOMIS ELEMENTARY SCHOOL DISTRICT,	OAH CASE NO. 2012110454
v.	
PARENT ON BEHALF OF STUDENT.	ORDER FOLLOWING PREHEARING CONFERENCE

On February 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Troy Taira, Office of Administrative Hearings (OAH). Colleen Snyder, Attorney at Law, appeared on behalf of Student. Colleen Villarreal, Attorney at Law, appeared on behalf of Loomis Elementary 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 through February 28, 2013, and March 4, 2013. The hearing shall begin at 1:30 p.m. on February 25, 2013, and on March 4, 2013, and at 9:30 a.m. all other days unless otherwise ordered. The hearing shall take place at the District's offices located at 3290 Humphrey Road, Loomis, California 95650.¹

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.

¹ 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.

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.

Student’s Issues

a) Did the District deny Student a free appropriate public education (FAPE) during the 2011-2012 school year, including extended school year, and the 2012-2013 school year by:

- a. failing to offer him an appropriate placement;
- b. failing to offer him adequate counseling services;
- c. failing to offer him adequate social skills services;
- d. failing to offer him adequate behavioral services;
- e. failing to conduct a functional behavior assessment;
- f. failing to implement his individualized education program (IEP);
- g. failing to implement his positive behavior support plan;
- h. failing to provide goals in all areas of need, specifically behavior and typing;
- i. failing to provide a transition plan;
- j. failing to provide adequate accommodations and modifications in the general education setting, specifically sensory strategies, adult support, modified schoolwork and homework to his level, and adapted paper; and,
- k. failing to implement a sensory diet?

b) Did District procedurally deny Student a FAPE during the 2011-2012 and 2012-2013 school years by failing to make a clear offer of FAPE?

c) Did District fail to adequately assess Student during the 2012-2013 school year by failing to conduct an adequate occupational therapy assessment?

Student's Proposed Resolutions

Student requests a finding that District denied Student a FAPE during the 2011-2012 and 2012-2013 school years. Student also requests District provide Student with compensatory education with individual tutoring, occupational therapy, social skills training, speech and language therapy, counseling, and behavior services. That District reimburse Parents for the costs of services obtained, including Lindamood-Bell instruction, individual tutoring, occupational therapy, social skills training, speech and language therapy, counseling, and behavioral services, including mileage reimbursement for said services. That District to develop goals in all areas of need, a transition plan, sensory diet, and a behavior support plan. That District place Student in a placement using Slingerland or Wilson methods with no more than one other student, with supports recommended by Dr. Christo, and behavioral services, counseling, speech and language therapy, occupational therapy, and social skills group. That District fund or reimburse Parents for an independent educational assessment in occupational therapy and functional behavior. Additionally, Student requests District fund additional reading services from Ann Becker, or qualified Slingerland provider, for 12.5 hours per week, additional tutoring for 10 hours per week, socials skills group, counseling, one hour speech and language per week, one hour occupational therapy per week, and physical education and arts programs.

District's Issue

Did District develop an offer of FAPE at the October 9, 2012 IEP appropriate to meet Student's needs and confer meaningful educational benefit for the 2012-2013 school year?

At the PHC, District indicated that the FAPE offer it made on January 23, 2013 is included in its issue for the hearing. However, the undersigned ALJ has subsequently determined that the District's FAPE offer on January 23, 2013, was not identified in its complaint filed on November 14, 2012, and there is no amendment to include the January 23, 2013 FAPE offer. Therefore, District's issue at hearing will be limited to District's FAPE offer as of November 14, 2012.

District's Proposed Resolutions

District requests a finding that District offered a FAPE to meet Student's unique needs and confer meaningful educational benefit for the 2012-2013 school year.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties have indicated they will use a joint exhibit binder and are encouraged to do so. Otherwise, the parties will identify exhibits by numbers, with 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 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 the need for calling witnesses out of order. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown at the discretion of the ALJ.

The parties will coordinate the availability and order of testimony of witnesses. 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 those matters raised in the immediately preceding examination. However, if a witness is to be called by more than one party, the parties will be allowed to question the witness so that the testimony can be completed in a single session without requiring the witness to return.

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 request 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.

District's request to allow Dr. David Kirschen and Laura Burley to testify telephonically is granted because Dr. Kirschen is in Arizona and Ms. Burley has relocated to Truckee, California. Student's request to allow Elizabeth Craynon to testify telephonically is granted because Ms. Craynon is in New York. The party calling the witness shall provide the witness with a complete exhibit binder from each party, 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.

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. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student shall present his case first. If a witness is to be called by both parties, the parties are granted leave to determine which attorney will begin the examination of the witness.

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration 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, 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 translation services.

14. Hearing Open/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 21, 2013

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings