

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100015

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On February 27, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Pamela K. Daves, Attorney at Law, appeared on behalf of Student (Student). Daniel L. Gonzalez, Attorney at Law, appeared on behalf of Compton 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 **March 5, 6, 7, 11, 12, and 13, 2013**, continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 10:30 a.m., and the second day of hearing, March 6, 2013, on which day the hearing shall begin at 9:00 a.m., unless otherwise ordered.

The hearing shall take place at **Caldwell Elementary USD, 2300 W. Caldwell St., Compton, CA 90220**

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. Did the District deny Student a free appropriate public education (FAPE) by failing to assess Student, in all areas of suspected disability, for his May 25, 2011 triennial individualized educational program (IEP), by relying on an outdated and inappropriate 2004 psychoeducational assessment, by

- failing to conduct an appropriate psychoeducational assessment, and by failing to conduct a speech and language assessment?
2. Did the District deny Student a FAPE by failing to conduct an appropriate speech and language evaluation for the June 4, 2012, IEP?
 3. Since September 27, 2010, has the District denied Student a FAPE by failing to appropriately assess Student in all areas of suspected disability, including reading, written expression, math, auditory processing, visual processing, attentional processing, social-emotional, and language?
 4. Did the District deny Student a FAPE at the May 25, 2011, and June 4, 2012 IEP's because the IEP's contained: inadequate speech and language services, inadequate and insufficient individualized special education instruction, inappropriate and ambiguous accommodations and modifications, and insufficient resource specialist services.
 5. Did the District deny Student a FAPE by failing:
 - a. to conduct an appropriate transition assessment for his June 4, 2012 IEP, and/or
 - b. to include a transition plan in his June 4, 2012 IEP?
 6. Did the District deny Student a FAPE by failing to provide and implement related services, accommodations, and modifications as set for in his May 25, 2011 IEP?
 7. Did the District fail to develop appropriate goals and objectives, at the May 25, 2011 and June 4, 2012 IEP's and, if so, did such procedural failure deny Student a FAPE?
 8. Did the District fail to timely convene an annual IEP meeting in May 2011 and, if so, did such procedural failure deny Student a FAPE?
 9. Did District fail to assure the attendance of required District personnel at the May 25, 2011 and June 4, 2012 IEP's and, if so, did such procedural failure deny Student a FAPE?
 10. Did the District fail to provide prior written notice of:
 - a. its refusal to provide Student speech and language services as requested by Parents at the May 25, 2011 and June 4, 2012 IEPs, and/or
 - b. its refusal to place Student in a special day class (SDC) for math as requested by Parents at the May 25, 2011 IEP, and
 - c. if so, did such procedural violation deny Student a FAPE?
 11. Did the District fail to provide a complete copy of his educational records in a timely manner in response to requests made on June 18, 2012 and, if so, did such procedural failure deny Student a FAPE?

Should either party contend that the issues as set forth hereinabove do not properly reflect the issues stated in the Student's complaint, the party may request that the issue be amended at the commencement of the first day of the hearing, with a specific reference to the complaint's allegation. Otherwise, the issues which control the hearing will be those stated in this paragraph 2.

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"). [If there are other parties, give then an alphabet designation as well, M for Mental Health, etc.). 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.

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 for purposes of preparing a schedule of witnesses to be presented to the ALJ on the first day of 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 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 provide Student with a copy of its PHC statement (filed on February 26, 2013) and thereafter identify for Student the witnesses on District's list with specificity sufficient to enable Student to prepare for hearing. Referring to a witness as "teacher" is insufficient.

Student indicated that his expert can only testify on March 6, 2013, until 10:30 a.m. Therefore, Student requested that the hearing commence at 9:00 a.m., on March 6, 2013. District did not oppose. Accordingly, Student's request is granted, as reflected in paragraph 1, above, unless otherwise ordered.

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. 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.

Though neither party anticipates the necessity of telephonic testimony, Student stated that the expert may need to complete his testimony by telephone if his testimony takes longer than anticipated. Student may make a motion requesting the telephonic testimony of his expert at hearing, but only if Student is in full compliance with the requirements, as set forth above. At that time, the ALJ shall hear argument from both parties and rule.

7. Timely Disclosure of Witnesses/Exhibits. Pursuant to a January 14, 2013 OAH order, entered on stipulation of the parties, the exchange of witness lists and exhibits by **5:00 p.m., February 27, 2013**, shall be deemed in timely compliance with Education Code section 56505, subdivision (e)(7).

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 motion already ruled upon herein, Student made two motions, which are ruled upon as follows:

- a. Student moved that the ALJ issue an order that OAH does not have jurisdiction to hear a claim based upon section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) [section 504].

Denied: Student did not allege a section 504 violation in his complaint and the ALJ can only issue a ruling on an issue if it is pled in the complaint.

- b. Student moved to amend his complaint to allege a section 504 violation against District.

Denied, for four reasons:

- (1) The ALJ is not empowered to grant Student's request because it is within five (5) days of the scheduled hearing (20 U.S.C. §14115(c)(2)(e)(i)(II)).
- (2) The District does not stipulate to the amendment (20 U.S.C. §14115(c)(2)(e)(i)(I)).
- (3) Student does not wish to forfeit the presently scheduled hearing and granting the motion would reset the timeline for the due process (20 U.S.C. §14115(c)(2)(e)(ii)).
- (4) If able to rule on the merits, the motion would be denied because the ALJ will not grant a motion to amend the complaint for the sole purpose of adding an issue over which OAH has no jurisdiction.

No other prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of February 27, 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 electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. No party may record the proceedings unless the ALJ grants permission to do so.

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 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 27, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings