

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012080885

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 27, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Deidre L. Johnson, Office of Administrative Hearings (OAH).¹ Attorney LaJoyce Porter appeared on behalf of Student and Parents (Student). Attorney James Meeker appeared on behalf of the Hayward Unified School District (District).² The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Hearing Dates, Times, and Location: The hearing dates are confirmed. The hearing shall take place on March 12 through 14, 2013, for a total of three days of hearing. The hearing shall begin at 9:30 a.m. on March 12, and at 9:00 a.m. on all other days. The hearing shall be held at the District's offices at 24411 Amador Street, Hayward, California 94540.³

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its

¹ Administrative Law Judge Margaret Broussard observed the PHC with the ALJ.

² Attorney Leah Smith was present telephonically with Mr. Meeker.

³ As previously ordered, at a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing. In addition, District has agreed to provide three parking spaces for the ALJ, the attorney for Student, and Parents, with confidential access arrangements.

own witnesses. Each party shall make witnesses under its control reasonably available to the other party without need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issues: The issues for hearing are limited to those alleged in Student's request for due process (complaint).⁴ The issues were discussed during the previous PHC on January 14, 2013, and were reframed, reorganized, and clarified. As revised, the issues are set forth in the Order Following Prehearing Conference of the same date. During this PHC, the parties confirmed that the issues as set forth in the January 2013 PHC order shall control the hearing, except as modified below:

Issue A: Not changed.

Issue B: Not changed except as modified below, with no objection by District:

(3) Student rescinded a description, made at the January 2013 PHC, of his issue regarding behavioral and counseling services as "educationally related mental health services." Student requested to replace that description with the following: "behavioral intervention and therapeutic counseling services." Student's request is consistent with his complaint and is granted.

(4) Student clarified that his issue regarding "writing services and/or supports" involves only the related service of tutoring to meet his writing needs, and does not involve other "supports." Accordingly, this issue is revised to involve "writing services" only.

Proposed Resolutions: Student's proposed resolutions contained in his amended complaint were reviewed during the PHC. Proposed resolutions one, two, and three were clarified, due to the passage of time, to include requests for both retroactive and prospective relief for the 2012-2013 school year. However, Student's fourth request for a remedy for the 2013 summer extended school year remains limited to prospective relief. Student's sixth request, one for attorney fees, is stricken as not within the jurisdiction of OAH in this proceeding.

4. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student agreed to use black binders and District will use binders of another color. The parties' exhibits shall be pre-marked using numbered tabs and accompanied by a detailed exhibit list. Student's exhibit list shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's exhibit list shall identify each exhibit by number along with a "D" (e.g., D1). Any document over five pages in length shall be internally paginated. Each exhibit binder shall contain a detailed table of contents or list.

⁴ The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

Each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing.⁵ At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible.

5. **Witnesses:** **Prior to the due process hearing, the parties shall informally meet and confer to formulate their witness schedules. At the commencement of the hearing, the parties will present the witness schedules.** At the commencement of the due process hearing, the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony.

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. Each party shall manage the number of witnesses so that the party's evidence will be presented within its approximate allocation of fifty percent of the total hearing time. The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

At the present time, Student and District each intend to call all witnesses listed in their respective prehearing conference statements previously filed with OAH. However, Student and District now intend to call both District's former Director of Special Education, Mina Hutchins, and the Interim Director Susan Parker.⁶

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).) The parties did not request the telephonic testimony of any witness during the PHC but reserved the right to do so.

⁵ Education Code section 56505, subdivision (e)(7).

⁶ District will notify Student by close of business on Tuesday, March 5, 2013, whether Student will need to subpoena Ms. Hutchins, since she is no longer a district employee.

7. Order of Presentation of Evidence and Scope of Examination: Student shall produce his evidence first. Where Student and District intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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 unless otherwise ordered.

8. Closed Hearing: The hearing shall be closed to the public unless Student requests otherwise.

9. Motions: 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 this PHC.

10. Special Needs and Accommodations: No special accommodations were requested during the PHC.

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 electronic devices shall be turned 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. Any party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Settlement: The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880**.

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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT **(916) 274-6035**, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. OAH will check for messages the evening prior to the hearing and the morning of the hearing.

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

Dated: February 27, 2013

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings