

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

REDLANDS UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013020305

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On March 18, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Vivian E. Billups, Attorney at Law, appeared on behalf of Redlands Unified School District and East Valley SELPA (District). Special education advocate, Steven A Figueroa, appeared on behalf of Parents and Student (Student). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing is continued by agreement of the parties to avoid interruption of the hearing as a result of a legal holiday. This is the first continuance on the amended complaint.

The hearing shall take place on **April 9, 10, 11 and 15, 2013**, at the District's offices located at **20 West Lugonia, Redlands, CA 92373**. The hearing shall begin at 10:30 a.m. on the first day of the hearing and at 9:30 a.m. all other days, 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. The issues at the due process hearing are listed below.

- (1) Did the District fail to timely schedule an individualized education program team meeting (IEP) to review independent educational evaluations (IEE) after Parents provided the IEE's to the District and, if so, did such procedural violation deny Student a free appropriate public education (FAPE)?

- (2) Does the offer of placement and related services, made by the District team members at the IEP of November and December, 2012, provide Student with a FAPE in the least restrictive environment (LRE)?
- (3) Did the District fail to ensure the attendance of persons legally required or otherwise necessary at the November and December 2012 IEP team meetings and, if so, did such procedural failure deny Student a FAPE in the LRE?
- (4) Did the District fail to timely provide Parents with all of Student's educational records, when requested by Parents or Student's representative and, if so, did such procedural violation deny Student a FAPE in the LRE?

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 shall timely serve 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 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.

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.

District identified one of its listed witnesses as no longer a District employee and, depending on the witness availability, may request that said witness testify by telephone. District may make a motion on the first day of hearing for the witness to testify by telephone.

Student stated that some of its witnesses may need to testify by phone, but was unable to identify such witnesses at the time of the PHC. Student is instructed that any such request must be made the first day of hearing and Student must, at that time, demonstrate good cause for a witness to testify via telephone.

7. Timely Disclosure of Witnesses/Exhibits. Parties are required to exchange their witness lists and exhibits by **5:00 p.m., April 2, 2013**, in order to timely comply with Education Code section 56505, subdivision (e)(7).

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

9. Motions. Other than possible motions related to telephonic testimony, as outlined in paragraph 6 hereinabove, no pretrial 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 **March 18, 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 accommodations for any witness or party, or for translation services.

14. Hearing Closed To the Public. The hearing shall 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 immediately inform OAH in writing 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: March 18, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings