

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2012070514

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On March 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Tania Whiteleather, Attorney at Law, appeared on behalf of Student. Nancy Finch-Heuerman, Attorney at Law, appeared on behalf of Long Beach Unified School District (District). Courtney Brady, Attorney at Law, appeared on behalf of Los Angeles County Office of Education (LACOE). 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 26-28, 2013 and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ at the District's offices located at 4310 Long Beach Blvd, Long Beach, CA 90807. The hearing shall begin at 10:00 a.m. the first day of the hearing and at 9:00 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.

a) Whether LACOE, within the two year period from July 17, 2010 to July 17, 2012 failed to fully and properly assess Student in all areas of suspected disability, including behavior?

b) Whether District for the period from September 2011 to June 2012 failed to fully and properly assess Student in all areas of suspected disability, including behavior?

c) Whether LACOE within the two year period from July 17, 2010 to July 17, 2012 failed to conduct an appropriate triennial evaluation of Student?

d) Whether LACOE denied Student a free appropriate public education (FAPE) within the two year period from July 17, 2010 to July 17, 2012 by:

1. Failing to review his annual goals to determine progress against the goals;
2. Failing to develop goals in all areas of need including reading, reading fluency, decoding, and reading comprehension, and writing;
3. Failing to provide appropriate services, including behavior;
4. Failing to develop an appropriate individual transition plan (ITP); and
5. Failing to discuss and determine placement in the least restrictive environment?

e) Whether District denied Student a FAPE from September 2011 to June 2012 and in the October 7, 2011 and March 7, 2012 addendum IEPs by:

1. Failing to review his annual goals to determine progress against the goals;
2. Failing to develop Student's baselines and present levels of performance;
3. Failing to develop goals in all areas of need including reading, reading fluency, decoding, and reading comprehension, and writing;
4. Failing to provide appropriate services including behavior;
5. Developing a behavior plan without an assessment;
6. Failing to develop an appropriate individual transition plan (ITP); and
7. Failing to determine placement in the least restrictive environment by failing to discuss parent's request for a change of placement from a special day class (SDC) placement to a resource services program (RSP) placement?

Student's proposed resolutions are set forth in the PHC statement dated March 15, 2013.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties may 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"). LACOE shall place the letter "L" in front of the exhibit to designate its exhibits. 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 ordered to meet and confer by March 25, 2012, as to the schedule of witnesses, and the elimination of duplicate exhibits or stipulating to joint exhibits and entering into written stipulations to be offered at hearing.

Student has identified 19 witnesses to be called at the hearing, including Ann Simun who will be called as Student's expert witness. District has identified 14 witnesses including Daniel Sullivan, Margaret Kaspar, and Angela Suttles as expert witnesses. LACOE has identified 11 witnesses and no experts. Some of the witnesses are listed by both parties. Parties who have identified expert witnesses are ordered to serve expert curricula vitae or resumes on all parties. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. 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.

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 has identified Student as a witness. Student is currently incarcerated at a probation camp and will be allowed to testify telephonically if the parties obtain authorization for him to do so.

7. Motions. Student made an oral motion at the PHC for a continuance. The undersigned ALJ ordered Student to file a written motion setting forth the basis of the request for a further continuance of this matter filed July 17, 2012 and amended November 29, 2012. Student was informed the motion would be submitted to the Presiding ALJ for ruling. 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 March 20, 2013.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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. Respondents have been requested to find more suitable accommodations and location for this hearing as it involves multiple parties and witnesses.

10. 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.

11. Special Needs and Accommodations. At present none of the parties anticipates the need for special accommodation for any witness or party, or for translation services.

12. Hearing Open/Closed To the Public. At the request of the parent, the hearing will be open to the public.

13. 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.

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

IT IS SO ORDERED.

Dated: March 20, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings