

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080106

ORDER FOLLOWING PREHEARING
CONFERENCE

On March 20, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Drew Massey, Attorney at Law, appeared on behalf of Student and Student's parents (Student). S. Daniel Harbottle, Attorney at Law, appeared on behalf of Irvine 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 25, 27 and 28, 2013, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on March 25, 2013, and at 9:00 a.m. on the remaining days of hearing, unless otherwise ordered.

The hearing shall take place at the District's offices located at 5050 Barranca Parkway, Irvine, California 92604, unless the District gives written notice of a different location prior to the hearing.

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. The issues at the due process hearing are listed below.

a) Did the District deny Student a free appropriate public education (FAPE) during the 2010-2011 school year by failing to provide Student with an appropriate placement and related services in the areas of behavior and speech and language?

b) Did the District deny Student a FAPE during the 2011-2012 school year by failing to provide Student with an appropriate placement and related services in the areas of behavior and speech and language?

c) Did the District deny Student a FAPE during the 2012-2013 school year by failing to offer or provide Student with an appropriate placement and related services in the areas of behavior and speech and language?

d) Did the District deny Student a FAPE during the 2010-2011 school year by failing to provide appropriate goals and objectives and by failing to modify goals despite the fact that they were not being met?

e) Did the District deny Student a FAPE during the 2011-2012 school year by failing to provide appropriate goals and objectives and by failing to modify goals despite the fact that they were not being met?

f) Did the District deny Student a FAPE during the 2010-2011 school year by failing to assess Student in all areas of suspected disability and by misidentifying Student's area of eligibility under "autistic-like behaviors?"

g) Did the District deny Student a FAPE during the 2011-2012 school year by failing to assess Student in all areas of suspected disability and by misidentifying Student's area of eligibility under "autistic-like behaviors?"

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 consecutively paginated, for example by Bates-stamping. 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 otherwise.

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.

5. 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.

6. Motions. No pretrial motions are pending. 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 the prehearing conference.

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

8. 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.

9. 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.

10. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

11. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

12. 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.

13. 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/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings