

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2013051148

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On September 6, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Alexa J. Hohensee, Office of Administrative Hearings (OAH). Andrea Marcus, Attorney at Law, appeared on behalf of Student. Ian T. Wade, Attorney at Law, appeared on behalf of William S. Hart Union High 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 September 10-12, 16-19, 2013, and 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., except September 16, which shall start at 1:30, unless otherwise ordered. Counsel have indicated that there may be a need to schedule a late start and/or a dark day during the hearing due to scheduling conflicts, and counsel are ordered to raise scheduling matters with the hearing judge on the first day of hearing.

The hearing shall take place at the District's offices located at 21515 Centre Pointe Parkway, Santa Clarita, California 91350.

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) Whether District denied Student a free appropriate public education (FAPE) from September 2011 through January 2013 by failing to assess Student in all areas of suspected disability, specifically:

- (a) Speech and language,
- (b) Behavior, and
- (c) Social emotional functioning.

(2) Whether District denied Student a FAPE from November 14, 2011 through October 3, 2012, by:

- (a) Failing to take adequate measures to prevent continued bullying of Student after District knew, or should have known, that Student was being bullied, or
- (b) Failing to provide Student with appropriate services to address the impact of the bullying on Student.

(3) Whether District denied Student a FAPE from August 2011 through May 24, 2013 by failing to offer or implement an appropriate behavior support plan for Student.

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. 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. Counsel shall meet and confer no later than 12:00 p.m. (noon) on September 9, 2013 concerning the availability of District witnesses. 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 12:00 p.m. (noon) on September 9, 2013, as to the schedule of witnesses. The parties are ordered to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The witness schedule will be finalized at the commencement of the due process 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 attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. 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.

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.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

8. Order of Presentation of Evidence. If a witness is to be called by more than one party, each party shall complete its direct questioning of that witness the first time the witness is called. If a party's witness is called first by an opposing party, direct questioning will be completed at the same time as cross-examination.

9. Motions. No pretrial motions are pending, although Student contemplates a motion to exclude Student as a witness. The parties are ordered to meet and confer prior to the hearing to determine if a stipulation to pertinent facts can avoid a need to call Student as a witness. Any other 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 PHC of September 6, 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, 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. At the request of Student, the parties may record the hearing, so long as that recording does not interfere with or delay the proceedings, and the parties are advised that only the recording made by OAH constitutes the official record of the proceedings.

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. Until and unless the parent indicates other wise to the hearing judge, the hearing will 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 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: September 06, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings