

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013061132

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On September 6, 2013, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Counsel for the Los Angeles Unified School District (District), Patrick J. Balucan, Esq., was available for the PHC. Attempts to reach counsel for Student, Warren Finn, Esq., for the PHC were unsuccessful. District previously filed a PHC Statement on July 18, 2013, and was not required to, and did not, file an amended PHC Statement. Student did not file a PHC Statement.

Student filed and served a Notice of Withdrawal of Request for IEE on the morning of September 6, 2013. Counsel for the District indicated that the District had received Student's Notice of Withdrawal of Request for IEE just prior to the PHC, and, based thereon, the District would file a Notice of Withdrawal of the District's Due Process Hearing Request no later than 10:00 a.m. on the morning of September 9, 2013.

Because this matter remains on calendar until the District's Notice of Withdrawal is received, the PHC was completed, and the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing is to take place on September 17 and 18, 2013, at the Office of Administrative Hearings, 15350 Sherman Way, Van Nuys, CA 91406, each day from 9:30 a.m. to 4:30 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

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 to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, are:

- A. Was the District's April 19, 2013 resource specialist assessment properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?
- B. Was the District's April 22, 2013 psycho-educational assessment properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?
- C. Was the District's April 11, 2013 supplemental social-emotional assessment properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?
- D. Was the District's April 23, 2013 speech and language assessment properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and the CDE shall mark its exhibits using numbers D1, D2, D3, etc. (or a similar prefix). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. The District will also inform Student of the identity of, and available contact information for, any witness identified by Student as an employee of the District who was left the District's employ. The parties will 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. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties are to exchange final witness lists and exhibit binders by the close of business on September 10, 2013. Witnesses and documents not disclosed on or before

September 10, 2013 may be excluded at the request of the other party from introduction at the hearing.

Each party may present additional witness and documents for purposes of rebuttal.

6. Telephonic Testimony. None expected.

7. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer on or before Friday, September 13, 2013, regarding the schedule of witnesses and possible stipulations that might reduce or eliminate the need to present certain witnesses or documents. The parties shall 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 parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

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

8. 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.

9. Motions. The District does not anticipate bringing any motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date by either party, it 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.

10. 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.

11. Special Needs and Accommodations. None.

12. Hearing Closed To the Public. The hearing will be closed to the public.

13. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. 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: September 6, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings