

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013050168

ORDER FOLLOWING PREHEARING
CONFERENCE

On September 9, 2013 , Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH) held a telephonic prehearing conference (PHC). Attorney Michelle LeGate appeared on Student's behalf. Attorney Elizabeth Rho-Ng appeared on behalf of San Francisco 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 September 16 through 19, and 23 through 26, 2013, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall take place at the District's offices located at 555 Franklin Street, 3rd Floor, San Francisco, California 94102. The hearing shall begin at 1:30 p.m. on September 16 and 23, 2013, and at 9:30 a.m. all other days, unless otherwise ordered. District will provide parking within its gated secured parking lot for Parents, Student's attorney, District's attorney and 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 at the due process hearing are listed below.

a) Did District deny Student a free appropriate public education (FAPE) during the 2010-2011, 2011-2012, 2012-2013, and for the 2013-2014 school years by:

1) failing to appropriately assess Student in all areas of unique need, including assistive technology and academics;

- 2) failing to appropriately assess Student in preparation for his triennial individualized education program (IEP) meeting in November 2011;
- 3) failing to offer Student appropriate related services to address his unique behavior needs, including one-to-one behavior support, and an appropriate behavior support plan;
- 4) failing to provide Parents with prior written notice of District's refusal to provide one-to-one behavior support as requested by Parents in March 2012;
- 5) failing to document Student's present levels of performance in his November 8, 2011 and March 12, 2012 IEP's;
- 6) failing to draft appropriate and measurable goals to address all of Student's unique needs during 2010-2011 and 2011-2012 school years;
- 7) failing to offer Student an appropriate placement in the least restrictive environment; and
- 8) failing to implement Student's IEP's for the 2010-2011 and 2011-2012 school years.

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 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.

The parties shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders. The parties shall not serve exhibits on OAH prior to the hearing.

The parties shall make reasonable efforts to exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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 September 12, 2013, as to the schedule of witnesses. The parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness when the witness is first called. 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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss 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.

The parties stipulated that former District employee Tammy Thompson-Cooke, who resides outside of California, shall be allowed to testify by telephone. Both parties have identified this witness for hearing. The parties shall be jointly responsible for insuring that the witness has a full copy of District's and Student's evidence binders at the time the witness is called to testify.

District requested that former employee Dr. Herbert Packer, who lives in Southern California, be allowed to testify telephonically. Student's attorney objected and requested that Dr. Packer personally appear. A ruling on District's request regarding Dr. Packer shall be deferred until the first day of hearing. Counsel are ordered to meet and confer on the scope of Dr. Packer's testimony, the estimated time needed, and the feasibility of Dr. Packer testifying by telephone or other electronic means as an alternative to personal appearance.

7. Motions. On August 30, 2013, Student filed with OAH and served on District a Notice to Appear at Hearing seeking the appearance of 14 District witnesses at 1:30 p.m. on the first day of the due process hearing. District filed a motion to quash the Notice to Appear on September 4, 2013. Student filed an opposition on September 9, 2013. During the PHC, Student withdrew his Notice to Appear, and District withdrew its motion to quash on the ground that it was therefore moot. The parties further agreed that District will make its current employees reasonably available for hearing pursuant to this order, and would accept service of subpoenas duces tecum for former District employees Dr. Herbert Packer, Tammy Thomsen-Cooke, and Maeve Mullolland. District agreed to provide Student's counsel with the last known contact information for former employee Mary Butlin for purposes of service of process.

Any additional prehearing motions 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 September 9, 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.

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 neither party anticipates the need for special accommodation for any witness or party, or for translation services.

12. Hearing Open 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

Dated: September 10, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings