

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACER HILLS UNION SCHOOL
DISTRICT.

OAH CASE NO. 2013060210

ORDER FOLLOWING PREHEARING
CONFERENCE

On September 9, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH).¹ Robert Closson, Ed.D., an advocate, appeared on behalf of Student. David Girard, Attorney at Law, appeared on behalf of Placer Hills Union School District. The PHC was recorded.

1. Hearing Dates, Times, and Location. The hearing shall take place on September 30 through October 3, 2013, at Weimar Hills School, 200 W. Weimar Cross Road, Weimar, California 95736. The hearing shall commence at 1:30 p.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered. The hearing shall continue day to day, Monday through Thursday, 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. The issues at the due process hearing are listed below.

a) Did the District deny Student a free appropriate public education (FAPE) by failing to assess him in all suspected areas of disability from May 29, 2011 to the present, specifically in the areas of hearing loss and attention deficit hyperactivity disorder (ADHD)?

b) Did the District deny Student a FAPE by failing to meet all legal requirements for the assessments it did conduct?

¹ The PHC followed an Order to Show Cause hearing concerning the failure of Student’s advocate to appear at the PHC previously scheduled for August 30, 2013. The Order to Show Cause is being ruled upon separately.

c) Did the District commit procedural violations by predetermining Student's individualized education program (IEP) at the IEP team meetings since May 30, 2011, thus significantly impeding Parents' right to meaningfully participate in the IEP process?²

d) Did the District commit a procedural violation by failing to consider Parents' input at IEP team meetings thus significantly impeding their right to meaningfully participate in the IEP process?

e) Did the District commit a procedural violation by failing to have all required personnel at the IEP team meetings occurring since May 30, 2011, thus significantly impeding Parents' right to meaningfully participate in the IEP process ?

f) Did the District commit a procedural violation by failing to provide Parents with prior written notice as to why the District was denying Student services requested by Parents, thus significantly impeding their right to meaningfully participate in the IEP process?

g) Did the District commit a procedural violation that denied Student a FAPE, and/or significantly impeded Parents' right to meaningfully participate in the IEP process by failing to adequately describe his present levels of performance in his IEP?

h) Did the District commit a procedural violation that denied Student a FAPE, and/or significantly impeded Parents' right to meaningfully participate in the IEP process by failing to adequately describe the supports and services contained in Student's IEP?

i) Did the District deny Student a FAPE by failing to provide him with adequate services and supports in his IEP and in the classroom, including but not limited to:

1) Physical therapy, occupational therapy and adaptive physical education to address timing of motion, manual coordination, and sensory input as well as motor integration;

2) Specialized instruction in the areas of math, typing, essay composition (grammar and mechanics);

3) A one-to-one aide in the classroom;

² Under California special education laws, a party must file a request for due process (complaint) no later than two years after the act or omission complained of has occurred unless certain exceptions apply that would toll this statute of limitations. (Ed. Code § 56505, subd. (l).) Student's complaint was filed with OAH on May 29, 2013. Although Student's complaint refers to events that occurred more than two years prior to the filing of his complaint, facts are not alleged in the complaint that, if proved at hearing, would support a tolling of the two-year statute of limitations.

- 4) Behavioral supports to address his ADHD;
 - 5) Measurable annual goals in his IEP;
 - 6) Personnel to provide all supports and services who were trained to work with students with hearing impairment;
 - 7) Modifications and assistive technology to address his hearing impairment;
 - 8) Counseling; and
 - 9) Parent counseling and training?
- j) Did the District deny Student a FAPE by failing to educate him in the least restrictive environment?
- k) Did the District deny Student a FAPE by failing to implement his IEP/s?
- l) Did the District deny Student a FAPE and/or significantly impede Parents from meaningfully participating in the IEP process by failing to provide Parents with progress reports as required in the IEP?
- m) Did the District deny Student a FAPE by changing his eligibility category from hearing impaired to having specific learning disabilities?

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 shall comply Education Code section 56505, subdivision (e)(7), which requires exhibits to be served on the other party no later than five business days prior to the commencement of the hearing. 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.

Inclusion of an exhibit in a party’s evidence binder is not a guarantee that an exhibit shall be admitted. Each party should be prepared to make an offer of proof as to the admissibility of an exhibit if challenged at hearing. 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 close of business on September 25, 2013, as to the schedule of witnesses. The parties shall ensure that there is a witness available to testify at all times during the hearing, to ensure that the hearing is completed as scheduled. 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 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 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. 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. Neither party has requested telephonic testimony.

7. Motions. No pretrial motions are pending or contemplated. 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 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 during the hearing unless permission to the contrary is obtained from the ALJ.

In his PHC statement, Student indicated that he would be audio recording the hearing. Permission is granted to both parties to record the due process hearing if they desire. OAH always makes a digital recording of the proceedings, and this recording is the official record of the hearing. Parties who record the hearing are to turn off their recorders whenever the ALJ orders that the hearing is “off the record.” Any violation of this order to turn off recorders when the matter goes off the record may result in the revocation of permission to record the hearing, and an order to destroy the previous recording. Further, the parties may not ask for a break if there is some malfunction of their recording equipment.

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.

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

14. 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.

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

IT IS SO ORDERED.

Dated: September 11, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings