

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEDALE UNION ELEMENTARY
SCHOOL DIST.

OAH CASE NO. 2013080692

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On October 25, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Sabrina Kong, Office of Administrative Hearings (OAH). Lori Stewart, advocate, and Mother appeared on Student's behalf. Darren J. Bogie, Attorney at Law, and Chrystal Silver Hill, District's Director of Special Education, appeared on District's behalf. 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 October 29, 30, and November 4, 2013, and continue day to day, Monday through Thursday, until completed, at the discretion of the ALJ, at the offices of the Rosedale Union School District located at **2553 Old Farm Road, Bakersfield, CA 93312**. The hearing shall begin each day at 9:30 a.m. and end at 4:30 p.m. on all days unless otherwise ordered, with the exception of the first day of hearing, on which day the hearing shall begin at 11:00 a.m.

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.

(A) Did the District commit procedural violations of the IDEA when it made a unilateral decision, without conducting an Individualized Education Program (IEP) team meeting or parent, as to Student's placement at the commencement of school year 2013-2014?

(B) Did the District fail to meet its child find obligations in October 2011 when Student was failing to progress in the general education setting?

(C) Did the District deprive Student of a FAPE when it failed to refer Student for special education assessment following Student's parent's request in October 2011?

(D) Since October 2011, did the District commit a procedural violation of the IDEA when it prevented Student's parent from participating meaningfully in the IEP decision making process?

Student's proposed resolution is to be awarded compensatory education.

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"). [If there are other parties, give then an alphabet designation as well, M for Mental Health, etc.). 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. 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. 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.

At the October 7, 2013 PHC, the parties had been ordered to meet and confer by October 24, 2013 as to the schedule of witnesses for the first day of hearing. The parties are ordered to submit a schedule of witnesses with time estimates for testimony to the ALJ on the first day of hearing. The parties have agreed 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.

Neither side has designated expert witnesses.

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. No telephonic testimony is anticipated by either party.

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. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence. However, witnesses to be called by both sides shall be questioned on all issues when first called.

9. 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 October 25, 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.

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. Student requested the ability to audio record the hearing to accommodate Mother's English as a second language needs. Mother declined OAH's offer of an interpreter at the hearing. The District also requested the ability to audio record the hearing. Audio recording is permitted subject to ALJ's instructions at hearing as to when to turn the recording device on and off. The parties' audio recording device may only be on during the period when the official record is on.

Ms. Stewart also requested that OAH curb the loud "aggressiveness" of District's counsel's typing at the hearing as it may be distracting to her. District's counsel offered to accommodate Ms. Stewart the best he can. ALJ will handle the situation as she may see fit at the hearing.

14. Hearing Open/Closed To the Public. At the request of the parent, the hearing will be open to the public. The District ensured that the hearing room has the capacity to accommodate 15 spectators.

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: October 25, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings