

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070167

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On October 28, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Eileen M. Cohn, Office of Administrative Hearings (OAH). Hans A. Gillinger, Attorney at Law, appeared on behalf of Student. Anahid Hoonanian, Attorney at Law, appeared on behalf of 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 proceed as scheduled on November 12, 13, 14, continuing to November 18, 19, 20 and 21, 2013, each day at 9:30 a.m. and ending at 5:00 p.m., except Monday, November 18, 2013, at which time the hearing shall commence at 1:30 p.m.. At the discretion of the ALJ, the hearing shall continue thereafter, day to day, Monday through Thursday. The due process hearing shall be completed prior to November 28, 2013, Thanksgiving. The parties shall inform their witnesses and clients, that in the event counsel is unable to complete witness examination within the eight days allotted, that they must be available the next week, no later than November 28, 2013, in person or telephonically.

The hearing shall take place at the Office of Administrative Hearings, Van Nuys, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406.

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.

The parties shall meet and confer no later than November 1, 2013, to finalize the issues to be presented at hearing and notify OAH. Student offered to withdraw specific issues and requested that the request be amended to include an issues that was

not referenced in the due process hearing request. After a recess and further discussion, Student's counsel withdrew the request to amend the complaint, and his withdrawal of certain issues, and represented he would meet and confer with District to finalize the issues. As such, counsel are ordered to meet and confer no later than November 1, 2013, to finalize the issues. After the parties meet and confer, Student's counsel shall immediately notify OAH in writing of any issues withdrawn from the due process hearing request, and any stipulations between the parties regarding the issues.

A.) Whether District denied Student a free and appropriate public education (FAPE) by failing to conduct appropriate physical therapy (PT) and speech and language (SAL) assessments in August 2011.¹

B.) Whether District denied Student a free and appropriate public education (FAPE) in the initial IEP of September 14, and October 12, 2011 (initial IEP):

1. depriving parents their right to participate in the decision making process by failing to provide a clear and coherent offer of special education and related services.
2. failing to develop measurable annual goals designed to meet Student's unique needs.
3. Failing to offer appropriate PT services.²
4. Failing to offer appropriate LAS services.
5. Failing to offer appropriate occupational therapy (OT) services.
6. Failing to offer appropriate behavioral intervention services.
7. Failing to offer an appropriate placement in the least restrictive environment (LRE).

C.) Whether District improperly responded to Parents' October 4, 2011, request for an independent educational evaluation (IEE) in the area of PT, such that District is obligated to provide Student an IEE at public expense.

¹ The ALJ left the issue as pleaded to allow the Student an opportunity to further clarify the issues with District.

² Student's attorney shall notify District and the ALJ whether she intends to withdraw this issue.

D.) Whether District denied Student a FAPE for the 2012-2013 school year by failing to convene an IEP team meeting after the initial IEP.

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 shall 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.

The parties shall meet and confer no later than November 1, 2013, to discuss any stipulations as to the foundation of exhibits and to agree upon a document that constitutes the complete and accurate IEP at issue.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses, except that 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 Friday, November 1, 2013, as to the schedule of witnesses, including the time allotted for direct and cross-examination, and shall finalize a joint witness schedule no later than Wednesday, November 6, 2013. The parties shall coordinate the availability, the order, and the time estimate of witness testimony 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 present the witness schedule to the ALJ at the start of the hearing and the ALJ shall finalize the schedule at that time. The parties shall also be prepared at the end of each day of hearing to discuss the schedule for the next day.

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 are reminded that it is within the ALJ's discretion to limit the number of witnesses and the time allotted for witness examination.

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. The parties do not intend to call witnesses by telephone. Should telephonic testimony be required to timely complete the hearing, the party shall obtain a stipulation from the other party, or request permission from the ALJ. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). 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. The parties are required to timely exchange witnesses and exhibits at least five business days prior to hearing. (Ed. Code, § 56505, subd. (e)(7)).

8. Motions. No pretrial motions are pending or contemplated. At the PHC Student withdrew her request to file an amended pleading. 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.

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

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. 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.

12. Special Needs and Accommodations. One witness requires a private room to attend to periodically attend to her child. Student's counsel shall provide OAH notice of the witness's scheduled appearance so that OAH can secure a private room.

13. Hearing Closed To the Public. The hearing shall remain closed 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: October 29, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings