

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. 2013080383

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On November 4, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Eileen M. Cohn,, Office of Administrative Hearings (OAH). Mark Woodsmall, Attorney at Law, appeared on behalf of Student. Yonit Kovnator, 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 is scheduled pursuant to the Order Granting Stipulated Request for Continuance, effective September 16, 2013, for November 12, 13, 14, 2013 at 9:30 a.m., continuing to November 18, 2013, at 1:30 p.m., and November 19, 2013, at 9:30 a.m., and day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ. The parties are notified that they are expected to complete witness examination during the time requested, and the ALJ will only consider additional days for good cause. Given the stipulated continuance, the unavailability of witnesses will not constitute good cause. Parties are further notified that in no event shall witness examination continue beyond November 2013.

The hearing shall take place at the Office of Administrative Hearings (OAH), 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.

a) Whether District denied Student a free and appropriate public education (FAPE) for the 2013-2014 school year, in its individual education program (IEP) offer of May 21, 2013, when it deprived parents of their right to participate in the IEP, or

otherwise committed procedural violations that impeded Student's access to education or resulted in Student's loss of an educational benefit, by:

1. Failing to state accurate present levels of performance (PLOP) and measurable annual goals.
2. Failing to consider the findings of Parents' private expert.
3. Interfering with Parents' right to participate and provide informed consent to the proposed IEP by not: (a) providing copies of progress reports on goals prior to the meeting, or (b) making the IEP timely available for signatures after the IEP, and prior to the beginning of the 2013-2014 school year;
4. Failing to ensure that necessary members of the IEP team were present at the meeting
5. Failing to provide prior written notice.

(b) Whether District denied Student a FAPE in its IEP offer of May 21, 2013, by failing to offer an educational placement in the least restrictive environment (LRE), in the following ways:

1. failing to offer appropriate behavior and aide support to facilitate peer interaction and reinforce social skills;
2. failing to provide clinic-based occupational therapy (OT) services;
3. failing to provide assistive technology (AT) or augmentative and alternative communication (AAC) support services and consultation at the levels recommended in Student's PLOPs;
4. failing to offer low incidence support Student required to adequately access the classroom;
5. failing to provide related services of physical therapy (PT), OT, language and speech (LAS) at the intensity and frequency Student required to access his education;
6. failing to provide instructional and related services, utilizing research-based, peer reviewed methodologies necessary for Student to access his education;
7. offering a special day class (SDC) which deprived Student of typical peer exposure he required to make educational progress;

3. **Exhibits.** **The parties shall not serve exhibits on OAH prior to the hearing.** 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. 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. 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 Thursday, November 7, 2013, and reach agreement on the operative and relevant IEP, and stipulate, if possible, to common documents, and the foundation and relevance of other exhibits.

4. **Witnesses.** Each party is responsible for procuring the attendance at hearing of its own witnesses, except 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 shall meet and confer no later than Thursday, November 7, 2013, as to the schedule and time estimates for witnesses, including direct and cross-examination. Prior to the commencement of the due process hearing, the ALJ and the parties shall present to the ALJ the witness schedule and time allocation, and will discuss the length of time anticipated for each witness and any 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.

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 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.

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 currently intend to have witnesses appear telephonically. 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. The parties shall disclose their witnesses and exchange documents no later than five business days prior to the due process hearing. (Ed. Code, § 56505, subd. (e)(7).)

8. 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 PHC.

9. Stipulations. **The parties shall meet and confer no later than November 7, 2013**, regarding stipulations to pertinent facts, contentions or resolutions. 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 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. The parties are authorized to record the hearing to prepare their examination and closing briefs. The parties shall notify the ALJ at the outset of the hearing if they are recording, and must turn off their recording equipment during breaks in the proceeding. The recordings are not the official record, and shall not be shared with witnesses or the public, and shall be destroyed after the parties receive the official transcript.

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

13. Hearing 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: November 05, 2013

/s/
EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings