

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TRACY JOINT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013040651

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Daniel R. Shaw, Attorney at Law, appeared on behalf of Parents and Student (Student). Eliza J. McArthur, Attorney at Law, appeared on behalf of the Tracy Joint Unified School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on November 18 through 21, and November 25 through 27, 2013, and continue day to day, Monday through Thursday, as needed and at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on November 18 and 25, 2013, and at 9:00 a.m. all other days unless otherwise ordered.

The hearing shall take place at the District's offices located at 1875 W. Lowell Ave, Tracy, California 95376.¹

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.

¹ At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. The District shall ensure that all parties, including witnesses, and the ALJ have drinking water and tissue available to them during the hearing.

2. Issues and Proposed Resolutions. The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC, and are listed below.²

Issue One: Did the District deny Student a free appropriate public education (FAPE) from April 2011 through the 2012-2013 school year, by failing to:

- a. Offer and provide appropriate accommodations and modifications;
- b. Implement his individualized education plan (IEP);
- c. Offer adequate home instruction supports;
- d. Offer and provide assistive technology; and
- e. Offer appropriate and measurable goals in all areas of need?

Issue Two: Did the District procedurally deny Student a FAPE during the 2011-2012 and 2012-2013 school years by failing to:

- a. Ensure that Student had a current IEP; and
- b. Failing to make a clear offer of FAPE?

Issue Three: Did the District fail to adequately assess Student during the 2011-2012 and 2012-2013 school years by failing to:

- a. Conduct a functional vision/learning media assessment;
- b. Conduct an assistive technology assessment; and
- c. Conduct an assessment of executive functioning?

Proposed Resolutions. Student seeks the following: an order of declaratory relief that the District has substantively and procedurally denied Student a FAPE during the 2011-2012 and 2012-2013 school years; an order that the District shall fund and/or reimburse independent evaluations in the areas of functional vision/learning media, assistive technology, and executive functioning, and fund the attendance of each assessor at an IEP team meeting to review their assessments; an order that the District shall provide Student with a hybrid program combining a shortened school day with home instruction to assist with work completion and organization skills; an order that the District shall revise Student's IEP

² The parties may further discuss the framing of the issues at the start of the hearing.

to offer appropriate accommodations and modifications such as decreased work, extended time and grading only work completed; and an order that the District shall provide Student with a credit recovery program and compensatory education including tutoring in all academic areas.

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. Notwithstanding Education Code section 56505, subdivision (e)(7), which requires each party to serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing, the parties have mutually agreed to a late exchange of their evidence no later than Wednesday, November 13, 2013. 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. The parties shall informally meet and confer no later than November 13, 2013, to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. 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. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. 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.

Student has identified 17 witnesses to be called at the hearing, and the District has listed 50 witnesses. Sixteen of the witnesses are listed by both parties. Both counsel represent that they will not be calling each of their identified witnesses and will meet and confer regarding their final witness lists by November 13, 2013. 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, to ensure that this matter is concluded within the time allotted, based upon the parties’ time estimates and the issues presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof in this proceeding and shall produce his evidence first. Where Student and District intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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, unless otherwise ordered.

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 anticipates a need for telephonic testimony.

7. Motions. During the PHC, Student and the District requested permission to record the hearing. Both parties are granted permission to privately audio record the hearing provided they ensure the recordings are turned off every time the ALJ goes off the record. Parties are advised that the only official recording of the hearing is that recorded by the ALJ.

No pretrial motions are pending or contemplated at this time. 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 November 8, 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 interpreter services.

12. Hearing Closed To the Public. At the request of the Student, the hearing will be closed 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.

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

IT IS SO ORDERED.

Dated: November 8, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings