

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS GATOS UNION SCHOOL
DISTRICT.

OAH CASE NO. 2013080675

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 22, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Valerie J. Mulhollen, Attorney at Law, appeared on behalf of Student. Laurie E. Reynolds, Attorney at Law, appeared on behalf of the Los Gatos Union 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.

a. Continuance of Hearing Dates. Prior to the PHC the due process hearing had been scheduled for December 3, 4, and 5, 2013. At the PHC the parties jointly requested a continuance of the hearing to January 29 and 30, 2014, and February 4, 5, and 6, 2014, to conform to their calendars and other hearing commitments and to add two additional hearing days made necessary by the number of witnesses the parties intend to present.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have

stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Good cause appearing, the due process hearing is continued to the dates set forth below.

b. New Hearing Dates and Times. The hearing shall take place at Los Gatos Union High School, 17010 Roberts Road, Los Gatos, California 95032, on January 29 and 30, 2014, and February 4, 5, and 6, 2014, and continuing day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On January 29, 2014, the hearing shall begin at 10:00 a.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., 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 and Proposed Resolutions.

Did the District deny Student a free appropriate public education (FAPE) for the school years (SYs) 2011-2012 and 2012-2013, and from May 28, 2013 to the present, by:

A. Failing to provide Student adequate and measurable goals in the areas of:

1. Social and emotional needs;
2. Behavior;
3. Social skills;
4. Expressive and receptive language;
5. Study skills and organization;
6. Attention and task completion;
7. Academics;
8. Motor needs; and/or
9. Vision?

B. Failing to provide an adequate program or placement, including related services, in the areas of:

1. Psychological and social worker services;
2. Specialized instruction for written language, study skills, math, and reading comprehension;
3. Social cognitive therapy and/or instruction;
4. Sensory motor therapy and/or instruction;
5. Parent training, and/or
6. Vision services?¹

C. Failing to provide Parents accurate reports on Student's present levels of performance, thereby denying Student educational benefit and substantially impeding Parents' right to participate in the individualized education plan process?

As resolutions, Student seeks reimbursement to Parents for services they funded and obtained in the areas of occupational therapy, social skills, behavioral support, therapy, extended school year and a unilateral placement in SY 2012-2013; and prospective placement (as a form of compensatory education) in a program with a small structured environment that can meet all of Student's unique needs.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on January 22, 2014, 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.

¹ Student does not assert this contention (B) with respect to the period of time from May 28, 2013 to the present.

4. Witnesses.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

c) Student has identified 27 witnesses to be called at the hearing, and the District has identified 17 witnesses. Some of the witnesses are listed by both parties. In light of the fact that five days have been scheduled for the hearing, examination of the number of witnesses proposed would make it difficult to complete the hearing as scheduled. Therefore, at the beginning of the hearing, each party shall serve on the other party and on OAH a tentative witness list, identifying the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Each revised witness list shall contain an estimate of the length of each witness's direct examination testimony. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and 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 their 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. In light of the rescheduling of the due process hearing, Student withdrew his request that expert witnesses be allowed to testify by telephone without prejudice to its renewal when the experts' calendaring needs during the new hearing dates may be determined. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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.

7. Electronic Recording of Hearing.

a. Audio Recording. At present no party intends to make an audio recording of the hearing. Any party that desires to make such a recording shall apply for leave to do so in advance from the ALJ and shall do so only on the conditions 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the

ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so will be subject to sanctions.

8. Motions. At present no prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

9. Compensatory Education and 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for the services of an interpreter.

13. Hearing Closed To the Public. At the request of Parents, the hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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 22, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings