

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013060562

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 25, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Parent appeared on behalf of Student with the assistance of Cantonese interpreter Daniel Hsueh. Daniel A. Osher, Attorney at Law, appeared on behalf of the Sacramento City Unified School District (District), along with Attorney Jennifer Schiffner. 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 December 2 through 5, 2013, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m., with the exception of the first day of hearing which will begin at 1:30 p.m.

The hearing shall take place on at the District's offices located at 5735 47th Avenue, Sacramento, California 95824.¹

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 and the ALJ have drinking water and tissue available to them during the hearing.

2. Issues and Proposed Resolutions.² The issues at the due process hearing are listed below.

Issue One: During the 2011-2012 and 2012-2013 school years, did the District deny Student a free appropriate public education (FAPE) because he did not receive meaningful benefit?

Issue Two: During the 2012-2013 school year, did the District deny Student a FAPE by failing to provide occupational therapy from January through June 2013?

Issue Three: During the 2012-2013 school year, did the District deny Student a FAPE by denying Parent meaningful participation in the decision making process when it

- a. Cancelled IEP team meetings;
- b. Failed to arrange a mutually agreeable date and time for the IEP team meetings; and
- c. Failed to provide effective interpreter services during the IEP team meetings?

Issue Four: Did the District deny Student a FAPE by lying to Parent?³

Proposed Resolutions: Student requests reading and writing assistance including one-on-one tutoring for 5 – 10 hours a week; that the occupation therapy providers document the provision of their services; that the District ensure the presence of a Cantonese interpreter at the IEP team meetings who is willing and able to interpret all verbal exchanges; and that the District ensure the translation of all IEP documents.

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 District represents that it has served Parent with its evidence binder 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.

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

³ The District reserves the right to make a verbal motion to dismiss this issue on the grounds that it pertains to confidential mediation discussions.

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 the ALJ rules that it is admissible. Student did not identify any exhibits during the PHC.

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 or identified at the PHC except for good cause shown, and at the discretion of the ALJ.

Student failed to file a PHC statement. During the PHC, Student identified the following individuals as witnesses: Superintendent Jonathon Raymond; Assistant Superintendent, Olivine Roberts; Joe Shumner of the District's complaint office; Ponce Mcarn of the District's human resources office; Becky Bryant, Director of Special Education; and interpreter Mr. Lee and three other unnamed interpreters.

The District objected to Student's witnesses other than Ms. Bryant and the interpreters, with the caveat that it may not be able to timely identify and produce the interpreters for hearing given the late request and the fact that the District is closed this week for the Thanksgiving holiday.

Student did not provide a sufficient offer of proof as to the relevancy of the testimony of Mr. Raymond, Ms. Roberts, Mr. Shumner or Mr. Mcarn.⁴ The District is not required to produce these witnesses at hearing. Student will be allowed the opportunity to renew his request to call these witnesses after the presentation of Ms. Bryant's testimony.

The District at this time intends to call Rebecca Bryant, Barbara Cameron, Jacki Glasper, Suzanne Odekirk, and the interpreter present at Student's IEP team meetings during the 2012-2013 school year to the extent this person can be located.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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

⁴ The District is not aware of potential District witnesses by the name of Shumner or Mcarn, and the ALJ is not clear on the spellings of their names.

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 requested telephonic testimony.

7. Motions. No pretrial motions are pending or contemplated, other than District's motion to dismiss Issue Four as it relates to confidential settlement negotiations. Student may make a motion that the District be required to translate its exhibit binder into Cantonese. Any other motions 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 25, 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. A Cantonese language interpreter is required for Parent. OAH will arrange for interpreter services.

12. Hearing Closed To the Public. At the request of the Parent, 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 25, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings