

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PASADENA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013090588

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On December 9, 2013 a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Sabrina Kong, Office of Administrative Hearings (OAH). Sundee Johnson, Attorney at Law, appeared on District's behalf. Sandra Fernandez, Mother, appeared on Student's behalf. Victor Ramos, a Spanish interpreter, interpreted for Mother. The PHC was recorded.

At the PHC, the ALJ granted Student's December 2, 2013 request for continuance because Mother indicated she needed time to find a new attorney. Student's attorney withdrew on December 5, 2013. District did not oppose the request, and the ALJ found that it constituted good cause for a short continuance.

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

1. Hearing Dates, Times, and Location. The continued hearing shall take place on January 27, 28, 29 and 30, 2014, and continue day to day, Monday through Thursday, until completed, at the discretion of the ALJ, at District's offices located at 351 S. Hudson Avenue, Pasadena, CA 91109. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. on all days unless otherwise ordered, with the exception of the first day of hearing, on which day the hearing shall begin at 1:30 p.m.

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. The issues at the due process hearing are listed below.

(a) Whether District denied Student a free and appropriate public education (FAPE) by: (i) failing to implement Student's November 7, 2011 individualized education

program (IEP) regarding transportation for the 2012-2013 school year? (ii) failing to fund, in advance of travel, Parent's weekly round trip transportation costs for accompanying Student to the California School for the Blind?

(b) Whether District's March 12, 2013 IEP offer, with clarifications in the June 12, 2013 and September 17, 2013 correspondence, regarding transportation was an offer of a FAPE?

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 may not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials.

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. 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 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 January 17, 2014, as to the schedule of witnesses, to coordinate the availability and order of testimony of witnesses, 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 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 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. District represented that all of the witnesses from the California School for the Blind (CSB) will need to testify by telephone. Presently, there are seven CSB witnesses from District's witness list of 11. District represented that it may not need testimony from all seven CSB witnesses, when ALJ informed District that seven witnesses are too many to testify by telephone. District is ordered to file a Motion Requesting Telephonic Testimony by December 17, 2013 setting forth the number and identity of witnesses from CSB who needs to testify by telephone and stating, under the penalty of perjury, why such witnesses cannot testify in person.

The parties were informed that 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. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing, on January 17, 2014.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: District's evidence followed by Student's evidence. However, witnesses to be called by both sides shall be questioned on all issues when first called.

9. Motions. Other than Mother's Motion for Continuance and District's Motion for Telephonic Testimony, which are addressed in this order, 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 December 9, 2013

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. A Spanish language interpreter is required for Parent.

13. Hearing is 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: December 9, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings