

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALHAMBRA UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014030623

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On May 5, 2014, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Amy Cooper, Esq. appeared on behalf of petitioner Alhambra Unified School District (District). Student's mother (Parent) appeared on behalf of Student. The PHC was recorded. District filed a prehearing conference statement, Student did not.

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

1. Hearing Dates, Times, and Location. The hearing is to take place on Tuesday, May 13, 2014, at Alhambra Unified School District, 1515 West Mission Road, Alhambra, CA 91803, each day from 9:30 a.m. to 4:30 p.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

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 issue to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, is:

- Is the District entitled to conduct an Educationally Related Intensive Counseling Services assessment of Student pursuant to its May 13, 2013 assessment plan for Student, without parental consent?

3. Exhibits. District's prehearing conference statement identified 25 documents that it may present at hearing. During the PHC, Student identified four documents – Student's fifth grade IEP, an educationally related mental health services assessment of Student conducted in fourth grade, a February 2014 Regional Center evaluation of Student, and an evaluation of Student by Pacific Clinics in 2011 – that Student may present at hearing

that were not also on District's document list. Student also identified the April 10, 2014 IEP-Manifestation Determination included in district's list, and District agreed at the PHC that Student could rely on District's copy of that document at hearing and would not be required to include a separate copy in Student's exhibit binder. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. District will mark District's exhibits using the numbers D1, D2, D3, etc., and Student will mark Student's exhibits using numbers S1, S2, S3, etc. (or a similar prefix). Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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.

4. Witnesses. District's PHC statement identified the following three percipient witnesses that District intends to present at hearing: Pat Mahony, District Director of Secondary Special Education; John Ochetti, Ph.D., District Lead School Psychologist; and Jenny Lin, District School Psychologist. District also identified John Ochetti, Esq. as an expert witness that District intends to present at hearing.

At the PHC, Student identified the following three percipient witnesses that Student intends to present at hearing: Parent; Pat Mahony; and Matthew Dultz, District Vice Principal of Student Services. Student has identified no expert witnesses that Student intends to present at hearing.

Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. District will advise Parent via email by 5:00 p.m. on May 6, 2014 whether it will make witness Matthew Dultz available to Student without the need for subpoena. The parties will 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.

5. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties will exchange final witness lists and exhibit binders by the close of business on Tuesday, May 6, 2014 at 5:00 p.m. Witnesses and documents not disclosed on or before that time may be excluded at the request of the other party from introduction at the hearing.

Each party reserves the right to present additional witness and documents for purposes of rebuttal.

6. Telephonic Testimony. None expected.

7. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer via telephone on Friday, May 9, 2014 at 2:00 p.m., with the time subject to change by mutual agreement. Counsel for District will place the required telephone call to Parent to initiate the conference. During the conference, the parties will 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 will identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence, and will also discuss the estimated amount of time required for direct examination of each witness, and cross examination of each witness. The parties will also discuss possible stipulations regarding issues, facts, or resolutions on which the parties agree, and that might reduce or eliminate the need to present certain witnesses or documents at hearing.

On the first day of the due process hearing, prior to calling the first witness, the ALJ and the parties will discuss any proposed stipulations as to issues, facts, or resolutions, which will be submitted to the assigned ALJ in written form at the commencement of the hearing. The ALJ and the parties will also 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 parties will 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

8. 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.

9. Motions. The parties do not anticipate bringing any motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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.

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, 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.

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. None.

13. Hearing Closed To the Public.

14. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. 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: May 6, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings