

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN MARINO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030816

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 5, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Mark Woodsmall, Attorney at Law, appeared on behalf of Parents and Student (collectively, Student). Karen Gilyard, Attorney at Law, appeared on behalf of the San Marino Unified School District. Part of the PHC was recorded, but due to an equipment malfunction the remainder of the PHC was not able to be 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 **May 15, 2014, and on May 19-22, 2014**, and continue day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. The first day of hearing shall begin at 9:30 a.m. and end at approximately 3:30 p.m., and the hearing on May 19, 2014, shall begin at 1:00 p.m. Unless otherwise ordered, all other hearing days shall begin at 9:00 a.m.

The hearing shall take place at the District's offices located at 1665 West Drive, San Marino, California 91108.

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 has not been 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.

I. Whether District deprived Student of a free appropriate public education (FAPE) when developing IEP's in the 2012-2013 and 2013-2014 school years by:

A. Failing to adequately assess Student in all areas of suspected disability, specifically in the areas of speech and language, occupational therapy, and recreational therapy/ social skills;

B. Failing to accurately state Student's present levels of performance in Student's Individualized Education Programs (IEP's);

C. Failing to craft appropriate measurable goals in Student's IEP's;

D. Predetermining its offers of placement and services;

E. Failing to consider the findings of Parents' private experts in the areas of language and speech, behavior, social skills, and inclusion;

F. Failing to provide full parental participation in the process of developing Student's IEP's and failing to provide an adequate IEP forum, by failing to timely respond to Parents' concerns, artificially limiting IEP meeting times, and thwarting Parents' efforts to set meeting times and dates; and

G. Failing to provide adequate or any prior written notice.

II. Whether District substantively denied Student a FAPE during the 2012-2013 and 2013-2014 school years by reason of the following:

A. Failing to offer an appropriate placement

B. Failing to offer sufficient LAS and OT services;

C. Failing to offer any social skills or recreational therapy services;

D. Failing to offer research-based or peer-reviewed interventions;

E. Failing to offer behavioral services and social interaction support; and

F. Failing to place Student in an environment free from harassment and bullying.

3. Exhibits. The parties shall serve their evidence binders on each other, , and shall serve and file their final exhibit lists with OAH, by no later than **5:00 p.m. on May 8, 2014**, in compliance with Education Code section 56505, subdivision (e)(7). 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 whether 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 pages a party's exhibits shall be consecutively numbered by Bates-stamp or other similar method, commencing with the

first page of the first exhibit and ending with the last page of the last exhibit. Each exhibit binder shall contain a detailed table of contents. 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 shall not serve exhibits on OAH prior to the hearing. In the event of duplicate exhibits, the most legible version will be used.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list, and not previously exchanged, shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is admissible.

4. Witnesses. The parties shall serve their final witness lists on each and other and file them with OAH by no later than **5:00 p.m. on May 8, 2014**, in compliance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, upon timely notice from 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 out of order. Neither party shall be permitted to call any witnesses not disclosed in that party's final witness list, except for good cause shown, and at the discretion of the ALJ.

The ALJ has discretion to limit the number of witnesses and set the length of time allowed for testimony. The parties are encouraged to review and curtail 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 should anticipate that, except for purposes of rebuttal or impeachment, witnesses who are listed on both parties' witness lists will only be permitted to be called to testify once.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The parties shall be prepared at all times throughout the hearing to discuss the witnesses to be presented the next day and the amount of 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, at the discretion of the ALJ.

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, unless the opposing party has stipulated that the witness may appear by telephone. Prior to the time each such witness is to testify, 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. Each such witness shall testify using a landline telephone, and shall be alone in a private room while testifying. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Motions. No pretrial motions are pending or contemplated. Any motion filed after the date of this Order 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 of May 5, 2014.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted in writing to the assigned ALJ.

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting 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 Accommodation. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services. The parties are aware of the requirement that the hearing location be compliant with the Americans with Disabilities Act.

12. Hearing Closed To the Public. Student has not requested that the hearing be open to the public. In the absence of such request, the hearing shall be closed to the public.

13. Settlement. The parties are encouraged to continue working together to reach a settlement 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 OAH AT THE FAXINATION LINE at (916) 376-6319.

Hearing dates 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 or with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 6, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings