

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2014020186

ORDER FOLLOWING PRE-HEARING
CONFERENCE OF MAY 16, 2014

On May 16, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Darrell Lepkowsky, Office of Administrative Hearings (OAH). Justin Shinnefield, Attorney at Law, appeared on behalf of the Poway Unified School District (Poway). Student's parent appeared on behalf of Student. The ALJ recorded the PHC.

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

1. Hearing Dates, Times, and Location. The hearing will be held on May 22 and 23, 2014, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the OAH offices located at 1350 Front Street, Suite 3005, San Diego, CA 92101. The hearing shall start at 9:30 a.m. on May 22, 2014, and at 9:00 a.m. all other days, unless otherwise ordered. The parties shall check in with the OAH receptionist for the location of the hearing room.

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) Does Poway's offer of specialized academic instruction in Student's initial individualized education program developed on December 5 and 17, 2013, and January 30, 2014, offer her a free appropriate education in the least restrictive environment?

b) Does Poway have the right to determine what staff will provide educational instruction and services to Student?

c) Is the staff selected by Poway to provide instruction to Student appropriately trained and credentialed?

d) Was Poway's March 28, 2014 offer of transportation services to Student appropriate to meet her unique needs? (Does Student require aide support during her school bus ride?

e) Was Poway's March 28, 2014 offer of aide support sufficient to meet 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, 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 shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), which requires that all exhibits be served on the opposing party no later than five business days before the hearing. 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.

Student has failed to file a prehearing conference statement and has failed to serve a copy of his exhibits on Poway within the time allowed by statute. Student shall therefore be limited to moving into evidence only exhibits listed in Poway's exhibit list, filed with OAH on May 13, 2014.

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.

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.

Student has failed to file a prehearing conference statement or a list of witnesses. Student will therefore be limited to calling as witnesses only those individuals identified by Poway in its witness list filed with OAH on May 13, 2014.

The parties are ordered to meet and confer by 5:00 p.m. on Tuesday, May 20, 2014, as to the schedule and order of witnesses. Counsel for Poway shall provide the ALJ with a list of the witnesses and their expected date and time of testimony at the beginning of the first day of hearing.

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. Unless otherwise ordered, only one round of re-direct and re-cross examination will be permitted.

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. 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. Motions. Student filed two pretrial motions:

- a) Motion for continuance. Student's motion is *****.
- b) Motion to change venue of the hearing to the OAH offices in downtown San Diego. Student's motion is GRANTED.

Any other motion filed after this date shall be supported by a declaration establishing good cause as to why the motion was not made prior to or during the prehearing conference of May 16, 2014.

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. Special Needs and Accommodations. A [Type of language] language interpreter [or other accommodation] is required.

At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

11. Hearing Open/Closed To the Public. At the request of Student's parent, the hearing will be open to the public.

12. 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.

13. Failure to comply with this order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 15, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings