

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040269

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On May 19, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Laurie Gorsline, Office of Administrative Hearings (OAH). Parent appeared on behalf of Student. Diane Willis, Attorney at Law, appeared on behalf of Los Angeles Unified School District (District). Spanish interpreter Elizabeth Camacho-Leon and Miguel Rojas translated the proceedings for Parent. Parent was also assisted by Carina Lopez Zuniga. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on May 29, June 2 and 3, 2014 and continuing 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. and end at 5:00 p.m. with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m. unless otherwise ordered.

The hearing shall take place at the Office of Administrative Hearings located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406.

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 issues at the due process hearing are listed below.¹
- a) Did District deny Student a free and appropriate public education (FAPE) by failing to offer appropriate speech and language services at the Individualized Education Program (IEP) team meetings held on or after November 1, 2013?
 - b) Did District deny Student a FAPE by failing to offer appropriate occupational therapy services at IEP team meetings held on or after November 1, 2013?
 - c) Did District deny Student a FAPE by failing to provide Parent with a copy of the February 25, 2014 IEP translated into Spanish?

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.

Pursuant to stipulation of the parties at the PHC, the parties shall serve their evidence binders on each other by no later than May 23, 2014.

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 for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes and curriculum vitae not later than 24 hours before the witness is scheduled to testify.

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

¹ In the Addendum to Proposed Resolution attached to the due process complaint (complaint), Student has requested an Occupational Therapy (OT) Independent Educational Evaluation (IEE) as part of the Student’s proposed remedies. However, the allegations in the complaint do not put the appropriateness of the District’s OT assessment directly at issue. District has filed its own case to defend its assessment in OAH Case No. 2014050692, where the appropriateness of District’s OT assessment will be determined. However, District is on notice that the determination of the Issue (b) may require a review of the appropriateness of District’s assessments that were prepared and reviewed at IEP team meeting(s).

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.

The parties are ordered to meet and confer as to the schedule of witnesses and 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. On the first day of hearing, District shall provide the ALJ with a detailed schedule of witnesses for both sides which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witnesses when the witness is first called. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses.

The following witnesses will be called to testify by Student:

Lisbeth Vega
Collette Davis
Mother
Father
Luis Garcia
Barbara Martinez
Angelica Calderon
Victorina Martinez
Maurcio Oneill
Juana Gutierrez
Tiburcio Maldonado
Carina Lopez Zuniga
Patricia _____
Jaime Sigal Gutierrez

The following witnesses will be called to testify by District:

Elliot Samson
George Weggler
Lisbeth Vega
Collette Davis
Fredy Lozano
Eduardo Pacheco

At the PHC, Student was ordered to provide the last name of “Patricia” to District by no later than May 21, 2014 or “Patricia” will be excluded from testifying at the hearing. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

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 such evidence.

The District shall have witnesses available in case agreement on a witness list is not reached. 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses’ testimony.

5. Telephonic Testimony. Neither party anticipates that any witness will testify by telephone. 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

6. Motions. District’s motion to consolidate OAH Case Nos. 2014040269 and 2014050692 filed on May 16, 2014 was withdrawn by the District at the PHC after the ALJ indicated the intention to grant the motion and set the consolidated matter for hearing on June 10, 2014. No other prehearing motions are pending or contemplated by the parties. Any prehearing 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.

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

8. 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 silent during the hearing unless permission to the contrary is obtained from the ALJ.

9. 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.

10. Special Needs and Accommodations. A Spanish language interpreter is required.

11. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public. The ALJ shall record the hearing and the ALJ's recording is the only official record of the hearing. Neither party shall be allowed to record or photograph the proceedings and public observers shall not be allowed to record or photograph the proceedings. To preserve the integrity of the due process hearing, the witnesses shall be admonished not to speak with anyone about the hearing.

The parties are advised that the Student's request that the hearing be open to the public does not limit the authority of the ALJ hearing this matter to order closure of the hearing or make other protective orders to the extent necessary or proper to ensure a fair hearing in the circumstances of the particular case, or for other purposes as set forth at Government Code, section 11425.20. The ALJ may also exclude persons whose actions impede the orderly conduct of the hearing, restrict attendance because of the physical limitations of the hearing facility, or take other action to promote due process or the orderly conduct of the hearing. (Cal. Code Regs., tit. 1, § 1030.)

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 19, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings