

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MAGNOLIA ELEMENTARY SCHOOL
DISTRICT,

v.

GUARDIAN ON BEHALF OF STUDENT.

OAH CASE NO. 2014050832

ORDER FOLLOWING PREHEARING
CONFERENCE OF JUNE 2, 2014

On June 2, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert Helfand, Office of Administrative Hearings (OAH). Deborah R.G. Cesario, Attorney at Law, appeared on behalf of the Magnolia Elementary School District (District). No one appeared on behalf of Guardian and Student.¹ 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 June 10-12, 2014, at the District's offices located at 2705 West Orange Avenue, Anaheim, CA 92804. The hearing shall continue day to day Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:00 a.m. the first day of the hearing and at 9:30 a.m. all other days unless otherwise ordered.

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) Was the District's 2014 multidisciplinary psychoeducational assessment appropriate?

¹ The ALJ phoned Student's counsel's office at about 1:03 p.m. The receptionist informed the ALJ that all lawyers were out to lunch. The ALJ was kept on hold for about five minutes. The ALJ then attempted to re-call Student's counsel twice and received a voice mail response.

b) Did the March 2014 Individualized Education Program (IEP), as amended, offer Student a free appropriate public education (FAPE) in the least restrictive environment?

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. 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.

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 June 6, 2014, as to the schedule of witnesses. The parties have agreed 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 following witnesses will be called to testify by the District: Lynda Wambaugh, Pamela Greenbalgh, Amanda Gonzalez, Cindy Hoffman, Patricia Polcyn, Annette Cleveland, Ryan Dixon, Lisa Armstrong, Marcey Chant, Diana Jones, Mary Olander, Tracy Mercado, Jim Campbell, Tan Vinh, Student’s father, Student’s grandmother/guardian.

The following witnesses will be called to testify by Student: Student’s grandmother/guardian, Ambreen Basria, Tan Vinh, Cindy Hoffman, Lynda Wambaugh, Ryan Dixon, Armando Gonzalez, Pamela Greenbalgh, Tracy Mercado, and Annette Cleveland. Student also lists Student as a witness. Because of Student’s age, Student will present an offer of proof to the ALJ prior to his testifying. Student also lists Kristine Huang, O.D. as an expert witness. Student is directed to produce no later than June 5, 2014 a copy of Dr. Huang’s c.v. and any written reports or records maintained by her regarding the topic of her testimony.

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 attempt to reach agreement on a witness list for the first day of hearing. 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.

Some of the witnesses are listed by both parties. When a mutually listed witness testifies, that witness will only testify once.

The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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. 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 has made three prehearing motions.

The first is to continue the hearing to permit the parties to attend a mediation. The District opposed the motion on grounds that it did not desire to mediate the matter. Accordingly, the motion to continue is DENIED.

The second motion is to digitally record the hearing and PHC in order to have a "complete record" of the hearing in its possession. The District did not oppose the motion. The motion will be addressed at the first day of hearing.

The third motion is to exclude all witnesses from the hearing room (pursuant to Cal.Code Regs., tit. 5, § 3082, subd. (c)(3)) during the hearing other than Student's guardian and parents. Student's motion is granted with the exception that the District may have a representative, who may also be on the witness list, present throughout the hearing.

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

11. Hearing Closed 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: June 2, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings