

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

|                                          |                                      |
|------------------------------------------|--------------------------------------|
| In the Consolidated Matters of:          |                                      |
| PARENT ON BEHALF OF STUDENT,             | OAH Case No. 2014030299              |
| v.                                       |                                      |
| SAN DIEGUITO UNION HIGH SCHOOL DISTRICT, |                                      |
| <hr/>                                    |                                      |
| SAN DIEGUITO UNION HIGH SCHOOL DISTRICT, | OAH Case No. 2014051269              |
| v.                                       |                                      |
| PARENT ON BEHALF OF STUDENT.             | ORDR FOLLOWING PREHEARING CONFERENCE |
| <hr/>                                    |                                      |

On June 2, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Robert Helfand, Office of Administrative Hearings (OAH). Megan N. Nunez, Attorney at Law, appeared on behalf of Parent on behalf of Student (Student). Ernest L. Bell, Attorney at Law, appeared on behalf of the San Dieguito Union High School District (District). The PHC was not 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 9, 2014 through June 12, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall commence on the first day at 1:30 p.m., and each other each day at 9:30 a.m., unless otherwise ordered. The shall take place at the District offices located at 710 Encinitas Boulevard, Suite 105, Encinitas, CA 92024-3357..

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:

*Student's Issues*

a) Did the District commit a procedural violation of the IDEA by failing to (1) complete its triennial assessment, which was due to be completed by June 13, 2013, timely, (2) to have a general education teacher present at the September 24, 2013, October 15, 2013, and December 12, 2013 Individualized Education Program (IEP) team meetings, and (c) timely appropriately respond to Student's parent's request for an Independent Education Evaluation?

b) Was the District's triennial assessment, which was reviewed at the October 15, 2013 IEP(IEP) team meeting, appropriate as it failed to assess to access Student's mental health needs?

c) During school year 2013-2014 did the District deprive Student of a FAPE by failing to provide Student with appropriate placement, services, and accommodations to meet his unique needs in mental health and dangerous behaviors?

*District's Issue*

d) Whether the District's offer of placement and services in the February 28, 2014 IEP constitutes a FAPE in the least restrictive environment.

*Proposed Resolutions*

Student's proposed resolutions are that the District fund an IEE, fund an Independent Educationally Related Mental Health Services Evaluation, fund placement in a Resident Treatment Center, and provide Student with compensatory education.

The District requests that OAH issue an order indicating that the February 28, 2014 IEP is appropriate.

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 represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7).** 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 5:00 p.m. on June 5, 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 Student: Parent, Roland Guy, Ami Allen, Ramon Lewis, Yolanda Johnson, Ashley Diehl, and Norman Severe. Student has designated Jill Weckerly as an expert witness.

The following witnesses will be called to testify by the District: Parent, Sharon Pankey, Lisa Ebner, Diane Dekker, Mary Sisti, Amanda Gretsches, Heather Lutz, Jane Caples, Kristen Grieder, Travis Well, Maryanne Dittman, Sarah Schirripa, Troy Nickell, Meredith Wadley, Casey Sovacool, Christy Halling, Alexis Alegre, Monica Cordova, Fei Hsu, Suzanne Afghanni, Jamie Dayhoff, Lydia Shorthill, and Charles Adams.

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. In light of the fact that three and a half days have been scheduled for the hearing in this matter, it would be difficult to complete the hearing as scheduled. Therefore, by noon on June 5, 2014, each party shall serve on the other party and on OAH a tentative witness list, including a time estimate of the length of

each witness's direct examination testimony, and notations as to the witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence. 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, and the ALJ will finalize the witness schedule. 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. Timely Disclosure of Witnesses/Exhibits. **[The request of [Name of party] to delay disclosure of witnesses/exhibits until [Number of] days prior to the hearing is denied/granted, and witnesses/exhibits shall be exchanged by [Date] at [Time] a.m./p.m.] [Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.] [The OAH order of [Date], specifically ordered the production of lists of all witnesses/documents by an earlier date, to wit: at least three business days prior to this PHC.]**

8. Motions. No pretrial motions are pending or contemplated.

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

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

13. Hearing Closed To the Public.

14. 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.

16. 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

