

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT AND
LODI SPECIAL EDUCATION LOCAL
PLAN AREA,

OAH Case No. 2014050960

PARENTS ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT AND
LODI SPECIAL EDUCATION LOCAL
PLAN AREA.

OAH Case No. 2014051150

ORDER FOLLOWING PREHEARING
CONFERENCE; ORDER GRANTING
CONSOLIDATION; ORDER GRANTING
CONTINUANCE OF NON-EXPEDITED
HEARING

On June 9, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Peter Paul Castillo, Office of Administrative Hearings. Kyle Raney, Attorney at Law, appeared on behalf of Lodi Unified School District and Lodi Special Education Local Plan Area. Student's Father appeared on behalf of Student in OAH Case No. 2014051150 and Father on behalf of Student in OAH Case No. 2014050960. The PHC was recorded.

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

1. Motion to Consolidate. On May 30, 2014, District and SELPA filed a Motion to Consolidate OAH Case Nos. 2014051150 and 2014050960. District's and SELPA's motion was discussed at the PHC.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative

proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, both cases involve a common question of law and fact, specifically, regarding District's discipline and whether the disciplinary was a manifestation of her conduct, Student's individualized education plan implemented and District's procedural compliance. In addition, consolidation furthers the interests of judicial economy because of the commonality of legal and factual issues, plus documentary evidence and witnesses. Accordingly, consolidation is granted.

District's Motion to Consolidate is granted. All dates previously set in OAH Case No. 2014051150 are vacated. The timeline for an expedited issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2014050960.

2. Hearing Dates, Times, and Location. The due process hearing shall take place on June 17, 18, and 19, 2014. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for June 17, 2014, when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 1305 E. Vine Street, Lodi, California 95240.¹

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. Expedited Issues and Proposed Resolutions. The issues at the due process hearing are listed below.²

Expedited Issue 1: Whether the District's manifestation determination is procedurally invalid because the District:

¹ At a minimum for the hearing in this matter, the room shall be accessible and have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's/SELPA's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall ensure that all parties and the ALJ have drinking water and tissue available to them and that the room is wheelchair accessible.

² On June 6, 2014, Student filed an amended complaint in OAH Case No. 2014050960. Student withdraws the amended complaint.

a) Failed to give Parents adequate notice of the manifestation determination team meeting;

b) Failed to review all relevant information at the manifestation determination team meeting;

c) Failed to give Parents adequate explanations of their procedural rights related to, or the purpose and significance of, the manifestation determination team meeting; and

d) Predetermined its decision to expel Student before the manifestation determination team meeting?

Expedited Issue 2: Whether Student's disciplinary conduct, for which District seeks expulsion, was caused by, or had a direct and substantial relationship to, her disability or disabilities?³

Expedited Issue 3: Whether Student's disciplinary conduct, for which District seeks expulsion, was caused by, or had a direct and substantial relationship to District's failure to implement her individualized education program?

Proposed Resolutions: Student requests that OAH strike the District's manifestation determination decision because District violated Parents' procedural rights, which prevented them from meaningfully participating in the educational decision making process. Additionally, Student requests that OAH issue an order for the District to reverse its manifestation determination decision and subsequent expulsion, and find that her disciplinary conduct was a manifestation of her disability or disabilities that the District was aware of and/or caused by District's failure to implement her IEP.⁴

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/SELPA 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

³ Student's contentions include, but are not limited to, claims that the District members of the District expulsion review team failed adequately to consider Student's multiple disabilities and acted on misrepresentations of Student's success, behavior, achievements and activities.

⁴ On June 3, 2014, District and SELPA filed a motion to strike Student's proposed remedies. The motion is granted to limit the issues for the expedited hearing. As to concerns about the proposed resolutions for the non-expedited hearings, those should be raised at the non-expedited hearing PHC.

exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other by 5:00 p.m., on June 10, 2014, in compliance with Education Code section 56505, subdivision (e)(7).⁵ 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 to the other party without a subpoena. 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 13, 2014, as to the schedule of witnesses, and 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. By 1:00 p.m. on June 16, 2014, each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.⁶ 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. 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.

⁵ Student may serve her exhibit binder at the District offices instead of District's legal counsel's office. District shall serve its exhibit binder on Father.

⁶ Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

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 and OAH grant the party's request. Neither party requested telephonic testimony.

7. Motions.

A. Judgment on the Pleadings: On June 4, 2014, Student filed a motion for judgment in favor of Student because District and SELPA had failed to convene a resolution session meeting. Student's motion was discussed at the PHC. District and SELPA filed a response on June 6, 2014.

The Individuals with Disabilities Education Act and state law regulating special education administrative proceedings require that, when parents file a due process complaint, within 15 days of receiving notice of such complaint, the local education agency must convene a resolution session. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a) (2006); Ed. Code, § 56501.5, subd. (a)(1).) The purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint, and permit the local education agency to resolve the matter. (§ 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2); Ed. Code, § 56501.5, subd. (a)(4).) The local education agency has 30 days from receipt of the complaint to reach a resolution. (§ 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b)(1) (2006); Ed. Code, § 56501.5, subd. (c).)

Student seeks a default judgment against the District for its failure to convene a resolution session. While the IDEA and Education Code section § 56501.5, subdivision (a)(1), require District to convene a resolution session after a parent files a due process complaint, neither grant an administrative law judge the authority to impose a default judgment against District for failure to convene such a meeting.⁷ Therefore, Student's motion for judgment on the pleadings is denied.

⁷ District's failure to comply with the IDEA may subject the agency to a compliance complaint by the parent to the California Department of Education. (See, Ed. Code, § 56045.)

B. Continuance of Non-Expedited Hearing: On June 9, 2014, Student filed a request to continue the initially set non-expedited hearing dates. District and SELPA did not oppose the continuance request. A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).)

Student established good cause for a continuance of the initially set non-expedited hearing. Therefore, the non-expedited PHC and the due process hearing are continued. The non-expedited PHC shall take place on July 14, 2014, at 10:00 a.m., and the due process hearing shall take place on July 21 through 24, 2014. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for July 21, 2014, when the hearing shall begin at 1:30 p.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at 1305 E. Vine Street, Lodi, California 95240.

C. No further pretrial motions are pending or contemplated. Any 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 of June 9, 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. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

10. Hearing Open To the Public. At the request of Parents, the hearing will be open to the public.

11. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

DATE: June 9, 2014

/s/

PETER PAUL CASTILLO

Administrative Law Judge

Office of Administrative Hearings