

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ACADEMY FOR ACADEMIC
EXCELLENCE,

v.

PARENTS ON BEHALF OF STUDENT

OAH CASE NO. 2014060645

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ACADEMY FOR ACADEMIC
EXCELLENCE.

OAH CASE NO. 2014061009

[Primary case]

ORDER FOLLOWING PREHEARING
CONFERENCE

On June 30, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH). Jack B. Clarke Jr., Attorney at Law, appeared on behalf of Academy for Academic Excellence (Academy). Hans A. Gillinger, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

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

1. Motion to Consolidate. On June 19, 2014, Student filed a Request for Due Process Hearing, OAH case number 2014061009 (Student's case). On June 25, 2014, Student moved to consolidate Student's case with the complaint filed by Academy in case number 2014060645 (Academy's case). On June 27, 2014, Academy filed a Notice of Non-Opposition, but did not agree to the dates currently set for the due process hearing in Student's case. Student's motion to consolidate is granted for good cause. Both cases involve the same factual issue, and will require the same witnesses and exhibits. The primary case number in the consolidated matter is case number 2014061009.

2. Hearing Dates, Times, and Location. The parties jointly request a continuance of the hearing on the consolidated matter to agreed dates, less than 90 days from the initial hearing dates set in both cases. Accordingly, the June 30, 2014, PHC is continued

to September 29, 2014, at 3:00 p.m. The hearing on the consolidated cases shall take place on October 1, 2, 7, 8, 9, 2014, and continue day to day as necessary at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on October 1, 2014, and at 9:00 a.m. on all other days unless otherwise ordered. The hearing shall take place at Academy's offices located at 17500 Mana Road, Apple Valley, California, 92307.

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.

3. PHC Statements, Witness and Exhibit Lists. PHC statements, witness and exhibit lists have been filed by both parties. The parties shall serve their exhibits on each other in compliance with Education Code section 56505, subdivision (e)(7). Additional prehearing conference statements need only be filed if the parties have changed their positions on the issues or evidence.

4. Motions. Academy timely filed a Notice of Insufficiency (NOI) in Student's case on June 27, 2014. Student filed a Response to Notice of Insufficiency on June 30, 2014.

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.) A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(IV).) The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." The pleading requirements should be liberally construed in light of the broad remedial purposes of the Individuals Disabilities Education Act and the relative informality of the due process hearings it authorizes. Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.

Student's complaint identifies Student by date of birth, address, parents, grade, schools of residence and attendance, and alleges Academy failed to provide Student a free appropriate public education by failing to provide an appropriate placement using a functional skills based program to meet Student's unique needs for the two year period prior to March 12, 2014. The allegations specifically refer to particular assessments and assessors by name. Student's proposed resolution includes compensatory education and other relief. The facts alleged in Student's complaint are sufficient to put Academy on notice of the issues forming the basis of the complaint, permit Academy to respond to the complaint and participate in a resolution session, mediation, and to prepare for hearing. The IDEA requires only a "description of the nature of the problem," facts related to the problem and proposed resolutions to the extent known and available at the time (20 U.S.C. (b)(7)(A)(ii)), a requirement liberally construed in light of the remedial and informal nature of the due process proceedings. Therefore, Student's complaint is sufficient as to claims arising under the Individuals with Disabilities Education Act (IDEA). The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code. To the extent Student's complaint alleges "violation of the Constitution, the Americans with Disability Act of 1990, title V of the Rehabilitation Act of 1973 [29 U.S.C. §§ 790 et seq.] and all other Federal laws..." those claims are dismissed.

5. All other PHC matters shall be discussed at the continued PHC to be held on September 29, 2014, at 3:00 p.m.

6. Settlement. Mediation is set on July 24, 2014. 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.

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

IT IS SO ORDERED.

DATE: June 30, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings