

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. 2014040615

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On June 2, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) June R. Lehrman, Office of Administrative Hearings (OAH). Rosa Hirji and Jenny Chau, Attorneys at Law, appeared on behalf of Student. Patrick Balucan, Attorney at Law, appeared on behalf of District. The PHC was recorded.

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

1. Hearing Dates, Times, Location, and ALJ. The hearing shall take place on June 10, 11, 12, 16, 17, 18 and 19, 2014, and continuing day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ, until concluded, at the OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing shall begin at 9:30 a.m. the first day of the hearing, 1:30 p.m. on June 16, 2014, and at 9:00 a.m. all other days unless otherwise ordered. The matter is assigned for hearing to ALJ Eileen Cohn.

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.

Did District deny Student a free appropriate public education (FAPE) by:

- a) Failing to conduct appropriate assessments in (1) psycho-educational and neuro-psychological functioning; (2) functional behavioral analysis ; (3) speech, language and communication; and (4) occupational therapy;

- b) Failing to offer appropriate related services in (1) speech, language and communication, (2) occupational therapy, and (3) behavior;
- c) Failing to provide Student with an appropriately credentialed special education teacher;
- d) Retaliating against Student for Parent's advocacy by withholding behavior logs and documentation regarding teacher and aide qualifications, and by informing Parent that the school will be shutting down Student's classroom;
- e) Excluding Student from enrichment and extracurricular activities¹;
- f) Failing to implement Student's individualized education programs (IEP's);
- g) Failing to make a clear written offer of placement and services in the April 16, 2012, and January 2014, IEP's;
- h) Failing to convene an annual IEP in 2013;
- i) Failing in the January 2014 IEP to state appropriate present levels of performance and goals;
- j) Failing in the January 2014 IEP to offer appropriate specialized academic instruction?

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 shall serve 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

¹ Issues (b)(3), (c),(d), and (e) are alleged to have constituted both a denial of FAPE and a violation of the U.S. and California Constitutions, the Americans with Disabilities Act, Title V of the Rehabilitation Act of 1973, 42 U.S.C. section 1983, and other federal and state anti-discrimination laws. All allegations not made under the IDEA are outside the jurisdiction of OAH, and are dismissed.

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 on or before 4:30 p.m. on June 4, 2014, as to the schedule of witnesses, 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 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.

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. None needed at this time.

7. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's, however if a witness is called by more than one party, that witness will be fully questioned by both sides on all issues whenever first called to the stand.

9. Motions.

At the PHC, District requested a continuance on the basis that District's counsel is scheduled for another due process hearing on the scheduled hearing days. The motion is denied, without prejudice to District's right to make a formal motion to continue on these grounds.

At the PHC, Student's counsel requested leave to digitally record the hearing. The motion is denied, without prejudice to Student's right to make such request to the hearing ALJ.

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

11. 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.

12. 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

14. Hearing Closed To the Public.

15. 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 02, 2014

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings