

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LANCASTER SCHOOL DISTRICT.

OAH CASE NO. 2014050790

ORDER FOLLOWING PRE-HEARING
CONFERENCE ON EXPEDITED DUE
PROCESS HEARING REQUEST

Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH), held a telephonic prehearing conference (PHC) on June 23, 2014. Student was represented by his mother. Attorney Angela Gordon represented Lancaster School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The expedited hearing shall take place on July 1, 2 and 3, 2014 and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The first day of hearing shall begin at 10:00 a.m. All other hearing days shall begin at 9:30 a.m. and end at 4:30 p.m. unless otherwise ordered.

Because District offices are closed for the summer, the parties agreed that the hearing shall take place at the Office of Administrative Hearings, located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406, telephone # 818-904-2383.

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. Issue. The only issue for hearing is:

Did District violate the Individuals with Disabilities Education Act by failing to give Student's parent proper notice of a manifestation determination review meeting?

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 shall not serve exhibits on OAH prior to the hearing.

The parties shall meet and confer before the hearing in an attempt to consolidate exhibits and avoid duplicates.

The parties are ordered to meet and confer not later than **close of business on Tuesday June 24, 2014**, to identify any exhibits they intend to offer into evidence that were not specifically identified during the telephonic PHC. Both parties shall exchange exhibits at least five business days before the first day of hearing, unless they otherwise agree. (Ed. Code, § 56505, subd. (e)(7).)

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify. District shall make reasonable efforts to obtain resumes of District employees who are scheduled to testify.

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.

The parties are ordered to meet and confer not later than **close of business on Tuesday June 24, 2014**, to identify the witnesses they intend to call at hearing, including their general area of testimony. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

Except solely for rebuttal or impeachment purposes, neither party shall be permitted to call any witnesses not disclosed to the other party at least five business days prior to the

hearing except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. (Ed. Code, § 56505, subd. (e)(7).)

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.

Neither party requested telephonic testimony at the PHC. Their right to do so will be reserved to the first day of hearing.

7. Motions. No prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the PHC of June 23, 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. 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. No text messaging will be permitted by anyone in the hearing room while the hearing is on the record.

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 three business 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.

Because this is an expedited hearing, the hearing dates will not be vacated if a settlement is reached subject to board approval, unless Student files a notice of withdrawal of the expedited claim.

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

IT IS SO ORDERED.

DATE: June 23, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings