

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. 2014020816

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 7, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Alexa J. Hohensee, Office of Administrative Hearings (OAH). Alexis Casillas and Eric Sams, Attorneys at Law, appeared on behalf of Student. Anahid Hoonanian, Attorney at Law, appeared on behalf of Los Angeles Unified School District (District). The PHC was 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 July 14-17 and 21-24, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 1:30 p.m., unless otherwise ordered.

The hearing shall take place at the offices of OAH located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406.

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.

(1) Unless barred by the statute of limitations, did District fail to conduct, or to timely conduct, assessments of Student from August 2010?

(2) Unless barred by the statute of limitations, did District deny Student a free appropriate public education (FAPE) from August 2010 through February 24, 2012, by:

- (a) Failing at individualized education program (IEP) team meetings to: (i) accurately report on Student's progress, (ii) accurately report on Student's present levels of performance, and (iii) consider a continuum of program options;
- (b) Failing to offer or provide Student an appropriate transition plan and services;
- (c) Depriving Student's parent of a meaningful opportunity to participate in the development of Student's IEP's;
- (d) Failing to offer appropriate goals;
- (e) Failing to offer or provide Student appropriate special education and related services; or
- (f) Failing to offer or provide Student placement in the least restrictive environment?

(3) Did District deny Student a FAPE from February 25, 2012, by:

- (a) Failing at individualized education program (IEP) team meetings to: (i) accurately report on Student's progress, (ii) accurately report on Student's present levels of performance, and (iii) consider a continuum of program options;
- (b) Failing to offer or provide Student an appropriate transition plan and services;
- (c) Depriving Student's parent of a meaningful opportunity to participate in the development of Student's IEP's;
- (d) Failing to offer Student appropriate goals;
- (e) Failing to offer or provide Student appropriate special education and related services; or
- (f) Failing to offer or provide Student placement in the least restrictive environment?

(4) Unless barred by the statute of limitations, did District fail to provide Student with a FAPE from August 2010 by failing to implement Student's IEP's?

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.

Separate documents should be separately marked, and not combined with other documents within the same exhibit.

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 Wednesday, July 9, 2014, as to the schedule of witnesses. The parties shall 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. Counsel for District shall have conferred with District as to the availability of District employees as witnesses, and be prepared to share this information with counsel for Student at that time. At the meet and confer, each party should be prepared to provide 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.

The witness schedule will be finalized at the commencement of the due process hearing.

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.

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. Counsel for District shall have conferred with District, and be prepared to discuss with Student's counsel no later than 5:00 p.m. on Wednesday, July 9, 2014, any and all documents that District contends cannot be timely produced to Student in response to Student's request for educational records. 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 evidence; however, witnesses to be called by both sides will be fully questioned on all issues whenever first called to the stand.

Both parties shall be prepared to present evidence on the issue of the statute of limitations at the beginning of the hearing, at the discretion of the ALJ.

9. Motions. Student's requests for a separate meeting room during breaks, power strips, facsimile machine access, copy machine access, and separate wireless internet access are denied. Areas for private conversations are available throughout the premises of the building in which OAH is located, Student can bring sufficient power strips for his

equipment, and Student can make his own arrangements or bring devices that allow internet access, copying, printing, or faxing through Student's own resources.

Student's request to allow recording of the due process hearing is granted subject to the following conditions: (1) the parties shall turn on and off the recording device at the same time that the ALJ is on and off the record; (2) the parties shall not play any part of the recording for a prospective witness; (3) the parties shall not publish or play any part of the recording for any purpose other than assisting in the representation and presentation of this due process hearing; (4) the parties will erase, or otherwise destroy, the recording after the hearing and all opportunities for appeal from any decision herein has been exhausted; and (5) the parties shall not use this recording in any subsequent due process hearing. The recording is not the official record and is permitted as a courtesy for preparation for this hearing only.

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 July 7, 2014.

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. A Spanish language interpreter is required. At present, neither party anticipates the need for other special accommodations for any witness or party.

14. Hearing Closed To the Public. The hearing will be 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: July 7, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings