

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060195

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On July 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Eileen M. Cohn, Office of Administrative Hearings (OAH). Edith Madrid and Kyra Clipper, 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 assignment. The hearing shall take place on July 23, 2014, 9:30 a.m., July 24 at 9:00 a.m., continuing to July 29, 30 and 31, 9 a.m. and continuing to August 5 and 6, 2014, 9 a.m. and thereafter, continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.

This matter has been assigned for hearing to ALJ Alexa Hohensee.

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.

a) Whether the District denied Student a free and appropriate public education (FAPE) at the May 31, 2012, individual education program (IEP) team meeting, by failing to:

1. assess in all areas of suspected disability;
2. accurately document Student’s present levels of performance (PLOPS);

3. provide meaningful goals in all areas of need;
4. offer and provide appropriate related services and supports to address Student's academic, behavioral, an social emotional needs; and
5. develop an appropriate transition plan and provide appropriate transition services.

B) Whether the District denied Student a FAPE at the May 17, 2013 IEP team meeting by:

1. predetermining his special education program;
2. failing to assess in all areas of suspected disability;
3. failing to accurately document Student's present levels of performance (PLOPS);
4. failing to provide meaningful goals in all areas of need;
5. failing to offer and provide appropriate related services and supports to address Student's academic, behavioral, an social emotional needs;
6. failing to develop an appropriate transition plan and provide appropriate transition services;
7. exiting him from special education; and
8. awarding him a certificate of completion instead of allowing him the opportunity to obtain a standard high school diploma.

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 are required to 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

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. The parties are ordered to meet and confer no later than noon, July 16, 2014, to schedule witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses except each party shall make witnesses under its control reasonably available. District shall supply the addresses and relevant contact information to Student for District employees and agents that it cannot assure Student it can produce at trial without a subpoena. The parties shall identify telephonic witnesses and explore using telephonic testimony for those witnesses that may be unavailable to appear in person. 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 have agreed and are ordered 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 proceeds without interruption during the days scheduled. The parties requested seven hearing days, but, to the extent practicable, are expected to meet and confer to shorten the number of hearing days, by organizing the witness schedule so that the most relevant witnesses and experts testify early in the proceedings. The District shall have witnesses available in case agreement on a witness list is not reached.

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 hearing time.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the witness schedule, length of time anticipated for cross-examination of each witness 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.

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.

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. Neither party requested telephonic testimony. The parties shall meet and confer July 16, 2014, or prior to hearing, to identify witnesses who are unavailable to appear in person, but may be available by telephone. Any party seeking to present a witness by telephone shall notify the ALJ the first morning of the hearing, and the ALJ shall decide at that time whether telephonic testimony is appropriate. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) 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. The parties are required to disclose witnesses and exhibits at least five business days prior to hearing and have done so in their prehearing conference statements. (Education Code section 56505, subdivision (e)(7).)

8. Motions. No 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 July 14, 2014.

9. Stipulations. The parties shall consider stipulations to pertinent facts, contentions or resolutions when they meet and confer on July 16, 2014, or prior to hearing. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. 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, 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. The parties are not authorized to record the hearing.

11. 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.

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

13. Hearing Closed To the Public. The hearing is closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: July 14, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings