

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013110472

ORDER FOLLOWING PRE-HEARING
CONFERENCE, INCLUDING RULING
ON STUDENT'S MOTION FOR
WITNESSES' ADDRESSES

On July 14, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student (Student). Geoffrey Winterowd, Attorney at Law, appeared on behalf of Torrance Unified School District (District). The PHC was recorded.

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

1. Ruling on Student's Motion to Compel District to Provide Addresses of District Witnesses:

On July 11, 2014, Student filed a motion for an order compelling District to provide the addresses for District witnesses, so Student might subpoena the witnesses to the hearing. Student identified five witnesses. On July 14, 2014, District filed an opposition to the motion, supported by a sworn declaration of the District's special education director, indicating that: two of the listed witnesses had never been employed by the District; one witness – Tami Dowgiewicz – is a former employee; and the two remaining witnesses – Amy Tsotsis and Blanca Alvarez – are currently employed by District. The motion was argued at the PHC.

District stated it will produce its employees for hearing. Therefore, the motion is denied as to Ms. Tsotsis and Ms. Alvarez. Also, the motion is denied as to the two witnesses who had never been employed by District. As to Ms. Dowgiewicz, District was willing to provide the address of another school district, where she is now employed. However, since school is not in session, this would not assure an address at which Student may serve a subpoena. Accordingly, the motion is granted as to Ms. Dowgiewicz and District is ordered to provide Student's counsel with Ms. Dowgiewicz's home address, for the sole purpose of effectuating service of a subpoena for appearance at the hearing herein, forthwith.

2. Hearing Dates, Times, and Location. The hearing shall take place on July 21, 22, 23 and 24, 2014, beginning at 9:00 a.m. (except for the first day, which will begin at 1:30 p.m.) and will end at 5:00 p.m., continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ.

The hearing shall take place at the District's offices located at 2335 Plaza Del Amo, Torrance, CA 90509.

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. Issues. The issues at the due process hearing are listed below.

- (1) Did District fail to meet its "child-find" obligations from July 2011 through October 2013 and, if so, did such failure deny Student a free appropriate public education (FAPE)?
- (2) Did District fail to conduct an adequate review of Student's records for Student's triennial evaluation and individualized education program (IEP) meeting in October 2012 and, if so, did such failure deny Student a FAPE?
- (3) Did District rely on a review of records, instead of assessments, for conducting the triennial IEP in October 2012 and, if so:
 - (a) Was District required to provide prior written notice of its intent not to assess and, if so, did such procedural error deny Student a FAPE?
 - (b) Did District's use of a records review, without assessments, deny Student a FAPE?
- (4) From July 2011 through October 2013, did District deny Student a FAPE by failing to assess Student in all areas of suspected disability, including:
 - (a) neuropsychological;
 - (b) psychoeducational;
 - (c) adequate functional behavioral assessment;
 - (d) assistive technology, and/or
 - (e) auditory (including hearing),
 - (f) a mental health assessment, and/or
 - (g) occupational therapy?

- (5) From July 2011 through October 2013, did District deny Student a FAPE by failing to offer Student:
 - (a) school-based counseling; and/or
 - (b) a one-to-one aide?
- (6) From July 2011 through June 2013, did District deny Student a FAPE by failing to design and implement a behavioral intervention plan?
- (7) From July 2012, did District fail to draft appropriate and measurable IEP goals and objectives at his 2012 and 2013 IEP's and, if so, did such procedural failure deny Student a FAPE?
- (8) From July 2012, did District fail to offer or provide Student with an appropriate transition plan and, if so, did such failure deny Student a FAPE?

4. 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 are to serve their evidence binders on each other by July 14, 2014, in order to comply with Education Code section 56505, subdivision (e)(7). (See Paragraph 7, hereinbelow.) 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.

If a party intends to rely upon a witness's education and professional experience in presenting testimony, the party must include the curriculum vitae of each such witness as part of the party's exhibits.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously timely 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.

5. 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 July 18, 2014, for purposes of preparing a schedule of witnesses to be presented to the ALJ on the first day of 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 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.

6. 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. If a witness is to be called by more than one party, the parties need be prepared to examine the witness when first called. Except on a motion and good cause shown, a witness will appear and testify once.

7. 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 anticipates the need for telephonic testimony at the hearing.

8. 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, which is July 14, 2014, herein.

9. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues, to be followed by District's presentation of evidence.

10. Motions. Other than Student's motion regarding witness addresses, ruled hereinabove, no pretrial motions are pending or contemplated. Any motion filed after this date, including motions for any further continuances, 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.

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

12. 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 electronic devices shall be shut off or set to vibrate during the hearing, unless permission to the contrary is obtained from the ALJ.

13. 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.

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

15. 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: July 14, 2014

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings