

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014020915

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 25, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Heather M. Edwards, Attorney at Law, appeared on behalf of Lodi Unified School District (Lodi). 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 at Lodi's district office located at 1305 E. Vine, Lodi, California 95240, on August 5, 2014, at 9:30 a.m., and August 6, 2014, at 9:00 a.m.¹ The hearing shall continue day to day, Monday through Thursday, as needed and at the discretion of the ALJ.²

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

¹ At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Lodi shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities that will be used during the hearing are accessible.

² In the event a third day is needed for hearing, the hearing will resume on Monday, August 11, 2014, at 9:30 a.m., due to the unavailability of the ALJ and Ms. Edwards. Ms. Amey indicated that she is scheduled to commence another special education due process hearing on August 11, 2014. Although this ongoing matter would take precedence over another hearing that has not started, Ms. Amey will need to ensure that she makes all necessary motions regarding her other hearing commitment with OAH.

continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issue and Proposed Resolutions. The issues in a due process hearing are limited to those identified in the written due process complaint.³ (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC, and are listed below.⁴

Issue One: Did Lodi deny Student a free appropriate public education (FAPE) from January 13, 2014, to the present by failing to implement Student's September 13, 2013 amendment individualized education program by failing to supervise Student's use of her hearing aid?

Issue Two: Did Lodi deny Student a FAPE from January 13, 2014, to the present by failing to provide Student with a replacement hearing aid because Student cannot benefit from her educational program without her hearing aid?

Proposed Resolutions: Student requests that Lodi be required to fund a replacement hearing aid and provide compensatory education for the denial of FAPE from January 13, 2014 to the present. Student is no longer pursuing her request for assessments or audiology services.

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 least five business days prior to hearing, no later than Tuesday, July 29, 2014. 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.

³ Student further alleged in her PHC statement that Lodi failed to meet her communication needs as a student with a low incident disability. Student agreed that this is addressed in Issue Two. Student also alleged in her PHC statement that Lodi failed to provide assistive technology and audiology assessments and services. Student agreed that this issue was not identified in her complaint. Lodi did not agree to the addition of this issue, and Student will need to file a separate complaint if she seeks to pursue this issue.

⁴ At the start of the hearing, counsel may further address the wording of these issues.

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 the ALJ rules that it is admissible.

4. Witnesses. The parties shall informally meet and confer no later than close of business on July 30, 2014, to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. 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. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

Student has identified nine witnesses and Lodi has identified 20 witnesses, many of whom will be called by both parties. Lodi does not intend to call all of its identified witnesses. 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issues presented.

Student may request to have Parent's testimony taken out of order in the event Parent is not physically able to testify the first day of hearing. Lodi has no objection to Parent testifying on the second day of hearing if needed.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof and shall present her evidence first, followed by Lodi. Where Student and Lodi intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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. At present, neither party anticipates the need for telephonic testimony.

7. Motions.

Audio Recording of the Hearing: It is within the discretion of the ALJ to permit the audio recording of a due process hearing. Neither party requested permission to audio record the hearing. Either or both parties will be permitted to audio record the hearing on the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

At present no prehearing 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 25, 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.

10. Compensatory Education and 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.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services. Lodi shall ensure that all facilities used during the hearing comply with the Americans with Disabilities Act.

12. Hearing Closed To the Public. At the request of the Parent, the hearing will be closed to the public.

13. 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 OAH receives a letter of withdrawal or request to dismiss the case, or the signature page of a settlement agreement withdrawing the matter. 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.

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

IT IS SO ORDERED.

DATE: July 25, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings