

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060847

ORDER FOLLOWING PRE-HEARING
CONFERENCE AND CHANGING
LOCATION OF HEARING

On July 28, 2014, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH) in OAH case number 2014060847.

N. Jane Dubovy, Esq. appeared on behalf of Student, with advocate Carolina Watts present in counsel's office. Jabari A. Willis, Esq. appeared on behalf of Inglewood 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. At the PHC, Student requested that the location of the hearing be changed from the District's Special Education Office because that location is being renovated, and mediation in another matter at that location on July 27, 2014 had been significantly disrupted by noise from the renovations. Student requested that mediation be held at OAH's offices to avoid noise and disruption. District objected on grounds that it might be possible to conduct the mediation at a location more convenient to District employees. Ordinarily, a request to change the location of a due process hearing should be submitted in a written motion. Here however, Student learned of the renovations of the District's Special Education Office on the day before the PHC. Because it seemed inadvisable either to keep the existing location and risk disruption of the hearing, or to delay a ruling on the request, possibly leaving insufficient time to notify witnesses of a change in location, the matter was discussed and resolved at the PHC.

Under the Individuals with Disabilities Act (IDEA) and state law, hearings must be conducted at a time and place that is reasonably convenient to the parents and child involved. (34 C.F.R. §300.515(d); Ed. Code, §56505(b).) Therefore, due process hearings are generally scheduled at the school district offices, the office of the Special Education Local Plan Area to which the District belongs, or the regional OAH office closest to the parents' residence.

Here, Student has requested that the location be changed to OAH's offices. The offices are suitable for hearings and, unlike other potential locations, were known to be available at the time of the PHC. Student's request to change the location of the hearing of this matter is therefore granted.

Hearing of this matter shall take place at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. The hearing will commence on August 6, 2014 from 9:30 a.m. to 4:30 p.m., and continue on August 7, 11, 12, 13, 14 from 9 a.m. to 4:30 p.m., continuing thereafter day to day, Monday through Thursday, 9:00 a.m. to 4:30 p.m., as needed at the discretion of the Administrative Law Judge.

The parties shall immediately notify all potential witnesses of the hearing dates and location, 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.

1. Student's Issues. The issues to be resolved at the due process hearing, as alleged in Student's complaint and clarified by the parties and the ALJ at the PHC, are:

Whether District denied Student a free appropriate public education (FAPE) during the 2013-2014 school year by:

- A. Failing to have a current IEP in place before the start of the school year?
- B. Failing to convene an annual IEP during the period from the parties' May 21, 2013 settlement agreement to the filing of the complaint?
- C. Failing to convene IEP meetings to review either the individualized transition assessment or the functional vision assessment conducted as independent educational evaluations (IEEs) of Student, within 15 days of receiving each assessment, as required by the parties' May 21, 2013 settlement agreement?
- D. Failing to consider the results of the IEEs at any time in decisions regarding the provision of FAPE?
- E. Failing to offer and implement an individualized transition program that included measurable postsecondary goals and transition services?
- F. Failing to provide prior written notice of: (i) any District decisions made with regards to Student's program during the school year; (ii) District's refusal to initiate an IEP meeting; or (iii) District's refusal to immediately initiate changes to Student's program in response to the recommendations of the IEEs?

- G. Failing to assess Student in all areas of suspected disability, in particular:
 - 1. language and speech;
 - 2. psycho-educational; and
 - 3. mental health services?
- H. By failing to offer Student adequate related services in the 2013 – 2014 school year, in particular:
 - 1. vision therapy;
 - 2. language and speech therapy;
 - 3. mental health services: and
 - 4. transition services?

2. Exhibits. Student identified 19 exhibits that Student expects to present at hearing. District identified four exhibits, including three also identified by Student. Each party will pre-mark its exhibits and place the exhibits in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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. Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment are expected to be subjects of direct examination.

3. Witnesses. Student identified five percipient and six expert witnesses who Student actually intends to present at hearing. District has identified six of the witnesses identified by Student, plus one additional percipient witnesses, Peggy Mazzarela, not identified by Student. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make District employees Christina Gonsalves and Kathryn Canino reasonably available to Student without the need for subpoena. The parties will 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.

4. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties represented that they had exchanged final witness lists and exhibit binders by 5:00 p.m. on Wednesday, July 30, 2014. Witnesses and documents not disclosed on or before Wednesday, July 30, 2014 may be excluded at the request of the other party from introduction at the hearing.

Each party reserves the right to present additional witness and documents for purposes of rebuttal.

5. 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.

6. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer on Friday, August 1, 2014 at 4:00 p.m. regarding the schedule of witnesses and possible stipulations that might reduce or eliminate the need to present certain witnesses or documents. Student will place the telephone call to initiate the meet and confer. 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. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

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 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. Stipulations to pertinent facts, contentions or resolutions are

encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

7. 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.

8. Motions. The parties did file any motions to be heard at the PHC, and do not anticipate bringing any motions to be heard at trial. The parties reserve the right to raise evidentiary objections to particular exhibits and testimony at trial. If any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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 PHC.

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/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. Each party may make an audio recording of the hearing. Audio recording will be permitted only during the time when the ALJ has announced that the matter is on the record. The recording made by the ALJ shall be the sole official recording of the hearing for any and all purposes.

12. Hearing Closed To the Public.

13. Settlement. The parties are encouraged to continue working together to complete 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. 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 AND SHALL 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. 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 29, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings