

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

THE CHARTER SCHOOL OF
SAN DIEGO.

OAH Case No. 2014030133

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 28, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Matthew Storey and Seth Schwartz, Attorneys at Law, appeared on behalf of Student. Lisa Corr, Attorney at Law, appeared on behalf of The Charter School of San Diego (Charter School). 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 August 6-7, and 11-15, 2014, continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.¹ 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 9:30 a.m., unless otherwise ordered.

The hearing shall take place at 10170 Huennekens Street, San Diego, California 92121. Charter School shall ensure that the location is accessible and compliant with the Americans with Disabilities Act. Charter School is responsible for preparing the room for the hearing. 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. Charter School shall ensure that all parties and the ALJ have drinking water, and that tissue is available on the witness table during the hearing.

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

¹OAH does not routinely schedule hearings on Fridays, and August 15, 2014, is a Friday. If another ALJ conducts the hearing, s/he has the discretion to vacate this date. Additionally, the day may need to be vacated if the operational needs of OAH are such that the ALJ is required for other duties on August 15, 2014.

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

2. Issue and Proposed Resolution. The issue at the due process hearing is listed below.

Did Charter School fail to offer Student an individualized education program that would meet his unique needs and provide him with educational benefit from May 15, 2012 to July 1, 2013?

The proposed resolution is that Charter School reimburse parent for tuition and costs incurred when Student attended Summit Preparatory School during the time period at issue.

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 “CS” in front of the exhibit to designate if it is a Student or Charter School exhibit (for example, “S-5, S-6, or CS-1, CS-2”). Each exhibit shall be internally paginated by exhibit, or all of a party’s exhibits shall be Bates-stamped. The exhibits shall be separated by numbered tabbed dividers. 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), unless they mutually agree to a later date. 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.

The parties are encouraged to have the resumes or curriculae vitae of witnesses with professional credentials available as exhibits. Use of these documents during the initial questioning often shortens the testimony of these witnesses.

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 in accordance with Education Code section 56505, subdivision (e)(7) 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. The ALJ determines the admissibility of each exhibit. Inclusion of an exhibit in the evidence binder is not a guarantee that it will be admitted. Parties must be prepared to make an offer of proof as to the admissibility of each 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 PHC statement, or otherwise disclosed in accordance with Education Code section 56505, subdivision (e)(7), or by agreement of the parties, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties have met and conferred concerning the scheduling of witnesses. They are 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 is completed as scheduled. 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 discuss the witness schedule with the ALJ at the commencement of the 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. 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.

The parties have stipulated that witnesses will be excluded from the hearing room when others are testifying. They have agreed that Parent will not remain in the hearing room when Student is testifying, even though she holds Student's educational rights and is his representative.² Nor will Student be in the hearing room when Parent is testifying.

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. Witnesses who are located outside of California at the time of hearing will be permitted 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. Motions. During the PHC the ALJ and parties agreed that witnesses residing outside of California may testify telephonically as noted above. No pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration

² Student's attorney shall provide proof that Parent holds Student's educational rights on the first day of hearing.

under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of July 28, 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 during the hearing unless permission to the contrary is obtained from the ALJ.

10. Audio Recording of the Hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. The parties are free to make such a request. However, the parties are advised that OAH always makes a digital recording of the proceedings, and this recording is the official record of the hearing. Parties who record the hearing are to turn off their recorders whenever the ALJ orders that the hearing is “off the record.” Any violation of this order to turn off recorders when the matter goes off the record will result in the revocation of permission to record the hearing.

11. 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.

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

13. Hearing Closed To the Public. The hearing will be 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 NOON OF 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 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 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 30, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings