

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014050138

ORDER FOLLOWING PRE-HEARING
CONFERENCE AND CONTINUING
HEARING DATES

On August 8, 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 2014050138.

Student's mother (Parent) appeared on behalf of Student. Donald Erwin, Esq., appeared on behalf of Los Angeles Unified School District (District). The PHC was recorded.

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

1. Continued Hearing Dates, Times, and Location. The parties jointly requested that hearing of this matter be continued to commence on September 3, 2014 to allow time to complete ongoing settlement discussions. A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) Here, good cause was shown for a short second continuance of the hearing date, to a new hearing date that is 70 days after the initial June 25, 2014 hearing date set in this matter, so that Parent and District may complete ongoing settlement discussions.

The continued hearing is to take place at Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406, commencing on Wednesday, September 3, 2014 from 9:30 a.m. to 4:30 p.m., and continuing on September 4, 8 and 9, 2014. With the exception of September 8, 2014, when the hearing will start at 1:30 p.m., the hearing will be conducted from 9 a.m. to 4:30 p.m., and 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 will immediately notify all potential witnesses of the hearing dates, and will 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. Student's Issue. The issue to be resolved in Student's Case at the due process hearing, as alleged in Student's complaint and clarified by the parties and the ALJ at the PHC, is: Whether District denied Student a free appropriate public education (FAPE) in its March 14, 2014 individualized education program (IEP) offer by failing to offer Student placement at Wilbur Elementary School for the 2014-2015 school year?

3. Exhibits. Exhibits shall be pre-marked and placed 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.

4. Witnesses. Student as of the PHC had identified no witnesses whom Student intends to present at hearing. District has identified 10 percipient witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. The District will also inform Student of the identity of, and available contact information for, any witness identified by Student as an employee of the District who has left the District's employ, by 5:00 p.m. on August 27, 2014. 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.

5. 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 are ordered to exchange final witness lists and exhibit lists by 5:00 p.m. on Tuesday, August 26, 2014. Witnesses and documents not disclosed on or before August 26, 2014 may be excluded at the request of the other party from introduction at the hearing.

If Student's exhibit list identifies one or more of the three District exhibits identified by District in its PHC Statement filed and served on August 5, 2014, Student is not required to serve copies of those documents on District, because they are already in District's possession. Also, if Student's exhibit list identifies additional documents, beyond those identified by District in its PHC Statement, that total 50 pages or less, Student may serve

Student's final exhibit list and exhibit copies by facsimile to the District. If Student's exhibit list identifies additional documents, beyond those identified by District in its PHC Statement, that total 51 pages or more, Student must deliver an exhibit binder to District containing hard copies of all of Student's additional exhibits.

Student is ordered to file Student's final lists of witnesses and exhibits with OAH by 5:00 p.m. on Tuesday, August 26, 2014. Student is not to file copies of the exhibits themselves. District is not required to, but may, submit an amended PHC Statement.

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

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.

7. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer on Thursday, August 28, 2014 at 1:00 p.m. regarding the schedule of witnesses for the hearing. District counsel for the hearing will place the telephone call to Parent to initiate the meet and confer. The parties 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 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.

8. 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.

9. Motions. The parties do not anticipate bringing any motions. In the event that 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.

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, 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.

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

12. Hearing Closed To the Public. The hearing will be 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: August 11, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings