

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ARCADIA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014060827

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On August 4, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Sabrina Kong, Office of Administrative Hearings (OAH). Mother and Father appeared on Student's behalf. Anahid Hoonanian, Attorney at Law, appeared on District's behalf. 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 12, 13, 14, 18 and 19, 2014, and continue day to day, Monday through Thursday, at the discretion of the ALJ, until completed. The hearing shall be held at the Arcadia Unified School District located at 150 South 3rd Avenue, Arcadia, CA 91006. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. on all days unless otherwise ordered, with the exception of the first day of hearing which shall begin at 9:30 a.m.

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.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Whether District denied Student a free appropriate public education (FAPE) from January 2014 to June 16, 2014 by¹:

(i) Failing its child find obligations;

¹Although Student alleged claims against District on all sub-issues (i) through (v), going back two years from June 16, 2014, or specifically from June 16, 2012 to June 16, 2014, parents relinquished Student's rights to hearing on all sub-issues for the period from June 16, 2012 to December 31, 2013.

- (ii) Failing to evaluate Student;
- (iii) Denying Student's request for independent evaluations;
- (iv) Failing to offer proper placement; and
- (v) Refusing to provide supplementary aid and appropriate teaching methodology to fit Student's special needs?

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 represent that they have served their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). 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.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials.

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 it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible.

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. The parties shall exchange their final witness lists by no later than August 5, 2014. No party shall be permitted to call any witnesses not disclosed in the party's final witness list 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 August 5, 2014, as to the schedule of witnesses and present a witness schedule at hearing pursuant to the example below, 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.

Example:

The following witnesses will be called to testify on August 12, 2014:

- 1. Jane Smith at 10:00 a.m.
- 2. Bob Jones at 11:00 a.m.

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.

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. Neither party contemplates the need for 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 District 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. The witness shall testify while in a private room and while using a land-line telephone. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. 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, or by no later than August 5, 2014.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence. However, witnesses to be called by both sides shall be questioned on all issues when first called.

9. Motions. District filed three motions, two of which were ruled upon at the PHC.

In its first motion, District requested the ability to digitally record the hearing for its own use, without any opposition. ALJ permits District to make only an audio recording of the hearing. District's request to record the hearing is granted subject to the following conditions: (a) District shall turn on and off the recording device at the same time that the ALJ is on and off the record; (b) District shall not play any part of the recording for a prospective witness; (c) District shall not publish or play any part of the recording for any purpose other than assisting in the representation and presentation of this due process hearing; (d) District will erase, or otherwise destroy, the recording after the hearing and all opportunities for appeal from any decision herein has been exhausted; and (e) this recording

shall not be used in any subsequent due process hearing. The recording is not the official record and is permitted as a courtesy.

In its second motion, District requested a hearing continuance on the basis that the hearing dates are during summer vacation and several witnesses are unlikely to be available, specifically Rickey Berkowitz, Courtney Franz, and Traci Sergi, and that the continuance is a first request for a brief continuance. Student opposed the continuance. ALJ denied the request for continuance because District had notice of the hearing dates since June 2014, and District's summer vacation is not good cause for continuing the hearing. District represented that Ms. Berkowitz, Ms. Franz and Ms. Sergi should be available after August 14, 2014, and will be made available to Student without the need for subpoenas. The parties were ordered to meet and confer by the end of business on August 5, 2014, at which time Ms. Hoonanian will provide the address, and phone numbers of the three witnesses to parents, should parents choose to subpoena the witnesses. At the PHC, parents represented that subpoenas were not necessary if District makes Ms. Berkowitz and Ms. Franz available sometime during the hearing. Parents may apply to OAH for issuance of subpoenas to Ms. Berkowitz, Ms. Franz and Ms. Sergi, if after the August 5, 2014 meet and confer District represents that it would not be able to make Ms. Berkowitz, Ms. Franz or Ms. Sergi available for testimony during the hearing dates.

District's third motion, a motion to dismiss claims, was filed on July 30, 2014. Parents have until August 5, 2014 to file an opposition, and informed ALJ that they intend to do so. ALJ heard oral arguments at the PHC on the motion to dismiss. ALJ's tentative ruling on the motion to dismiss is to grant in part, and deny in part as follows: (a) The due process hearing shall be limited to claims within the two year statute of limitations period, from June 16, 2012 to June 16, 2014, and shall not include the claims relinquished by parents as stated in footnote 1 of paragraph 2 above. (b) The remaining portions of the motion to dismiss are denied. OAH will consider Student's claims regarding "loss of time, hardship, anxiety and loss of money" to the extent they relate to the denial of FAPE, reimbursements, compensatory education, or other remedies from January 2014 to June 16, 2014. Parents' opposition on the motion to dismiss will address why Student should be entitled to present evidence regarding sub-issues (i) and (iv) for the period before June 16, 2012, mainly because of District's alleged fraud and misrepresentation.

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 August 4, 2014 prehearing conference.

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

11. 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.

12. 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.

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

14. Hearing Will Be 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 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: August 04, 2014

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings