

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CELERITY EDUCATIONAL GROUP,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014050842

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 11, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Elsa H. Jones, Office of Administrative Hearings (OAH). Hollis R. Peterson, Attorney at Law, appeared on behalf of Celerity Educational Group (Charter). There was no appearance on behalf of Student. The ALJ called Student's Mother, but nobody answered the phone. With the assistance of Portuguese interpreter Josh Pryor, the ALJ left a voice mail message on Mother's voicemail in both English and Portuguese. Mother did not respond to the voicemail message, although Mr. Pryor remained available by telephone throughout the PHC to assist Mother should she desire to participate in the PHC. The PHC was recorded.

Based on discussion with counsel for the Charter, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place on August 18 through August 19, 2014, and continuing day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the first day of hearing shall begin at 1:30 p.m., and all other hearing days shall begin at 9:00 a.m.

The hearing shall take place at the Charter's offices located at 2069 West Slauson Avenue, Los Angeles, California 90047.

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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues: The issue to be heard at the due process hearing is:

Was the Charter's Multi-Disciplinary Assessment of March 2014 appropriate, and did the Charter file this due process matter without undue delay, such that Student is not entitled to an Independent Educational Evaluation?

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 “C” in front of the exhibit to designate whether it is a Student or Charter exhibit (for example, “S-5, S-6, or C-1, C-2”). Each exhibit shall be internally paginated by exhibit, or all of a party’s exhibits shall be consecutively numbered, by Bates-stamp or other similar method, starting with the first page of the first exhibit and concluding with the last page of the last exhibit. 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 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 exhibit list Charter included in its PHC Statement filed with OAH on July 29, 2014, shall constitute Charter’s final exhibit list. Unless used solely for rebuttal or impeachment, any exhibit not included in that party’s final exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is otherwise admissible.

4. Witnesses. The parties shall serve their final exhibit lists on each other in compliance with Education Code section 56505, subdivision (e)(7). The witness list Charter included in its PHC Statement filed with OAH on July 29, 2014, shall constitute its final witness list. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party without subpoena, upon timely request. 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 final witness list except for good cause shown, and at the discretion of the ALJ. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their testimony. Witness testimony 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, at the discretion of the ALJ.

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 time that the witness is to testify, 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. Unless otherwise ordered, the witness shall testify on a land-line telephone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Motions. No pretrial motions are pending or contemplated.

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

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing unless the ALJ grants permission.

10. Mother to Request Interpreter if Needed. Charter requested that a Portuguese interpreter be available as an accommodation for Mother. To date, Mother has not participated in any proceedings scheduled in this matter, and she has not requested an interpreter. The only document Mother filed with OAH pertaining to this matter was written in English. Consequently, if Mother intends to participate in the due process hearing and she requires an interpreter, she must immediately notify OAH at (916) 263-0880 of her need for an interpreter so that OAH can timely secure an interpreter for the hearing.

11. Hearing Closed To the Public. The hearing will be closed to the public.

12. Settlement. The parties are encouraged to work 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.

13. Failure to comply with this Order or with Education Code section 56505. subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: August 12, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings