

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014051097

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). Pamela K. Daves, Attorney at Law, appeared on behalf of Parent and Student (collectively, Student). Karen E. Gilyard, Attorney at Law, appeared on behalf of Pasadena Unified School District (District). The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place from August 18-21, 2014, and August 25, 2014, and shall continue 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 subsequent hearing days shall begin at 9:00 a.m.

The hearing shall take place at the District's offices located at 351 S. Hudson Avenue, Pasadena, California 91109.

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 dates or properly subpoenaed, as applicable.

2. Hearing ALJ. ALJ Eileen Cohn has been assigned as the hearing ALJ.

3. Issues. The issues to be heard at the due process hearing are listed below.

Did District deny Student a free appropriate public education (FAPE) by reason of the following:

- a. Failing to assess Student in a timely manner in response to Parent's requests for assessment of April 15, 2013, and October 13, 2013;
- b. Failing to provide prior written notice in response to Parent's request for assessment of April 15, 2013;
- c. Failing to provide Parent with a copy of the procedural safeguards upon her April 15, 2013, request for assessment;
- d. Failing to timely and completely respond to Parent's request for Student's educational records prior to the Individualized Education Program (IEP) meetings held in February 2014 and April 2014;
- e. Failing to appropriately and timely respond to Parent's April 7, 2014, request for an independent psychoeducational evaluation; and
- f. Failing to find Student eligible for special education at the IEP meetings held in February 2014 and April 2014?

4. 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 whether 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 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.

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.

5. Witnesses. The parties shall serve their final exhibit lists on each other in compliance with Education Code section 56505, subdivision (e)(7). 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 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. 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 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 attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared during each day of hearing to discuss the witnesses to be presented that day and the next day, and the time the testimony of each such witness is expected to take.

Except for purposes of rebuttal or impeachment, the parties should expect that each witness shall be called to testify only once.

6. 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.

7. 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.

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, at the discretion of the ALJ.

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after August 11, 2014, 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 of August 11, 2014.

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

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 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.

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 interpreter services.

14. Hearing Closed To the Public. The 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.

16. 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 13, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings