

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEAN VIEW SCHOOL DISTRICT AND  
CALIFORNIA CHILDREN'S SERVICES.<sup>1</sup>

OAH Case No. 2014070277

ORDER FOLLOWING PREHEARING  
CONFERENCE OF AUGUST 18, 2014

On August 18, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings. John G. Nolte and Maureen R. Graves, Attorneys at Law, appeared on behalf of Parent on behalf of Student. Karen Van Dijk, Attorney at Law, appeared on behalf of the Ocean View School District (Ocean View). Angelise M. Marcigliano, Attorney at Law, appeared on behalf of California Children's Services. 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 26, 27, 28, and September 3 and 4, 2014, and shall continue day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the West Orange County Consortium Special Education Local Planning Area offices located at 5832 Bolsa Ave., Huntington Beach, California 92649. The hearing shall begin at 9:30 a.m. the first day of the hearing, at 1:00 p.m. on August 27, 2014, and at 9:00 a.m. all other days unless otherwise ordered.

Ocean View shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Parents and their representatives; 2) a table for Ocean View's legal representative and special education representative; 3) a table for California Children Services and its representatives; 4) a table for the witness; and 5) a table for the ALJ, near an electrical outlet. Ocean View shall provide drinking water to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. Ocean View shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

---

<sup>1</sup> In his prehearing conference statement of August 15, 2014, Student dismissed the Huntington Beach Union High School District.

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.

a) Whether Ocean View denied Student a free appropriate public education from May 1, 2012 through June 23, 2013, due to the following:

- i) Failing to provide Student adequate assessments in the area of self-help;
- ii) Failing to provide Student adequate goals in the area of self-help;
- iii) Failing to provide Student adequate services in the area of self-help;
- iv) Failing to provide Student an adequate assessment in the area of receptive communication;
- v) Failing to provide Student adequate goals in the area of receptive communication;
- vi) Failing to provide Student adequate services in the area of receptive communication;
- vii) Failing to meet Student’s academic needs;
- viii) Failing to provide Student an adequate assessment in the area of expressive communication;
- ix) Failing to provide Student adequate goals in the area of expressive communication;
- x) Failing to provide Student adequate services in the area of expressive communication;
- xi) Failing to implement research-based methodologies;
- xii) Failing to meet Student’s social needs;
- xiii) Failing to identify or meet Student’s transition needs;

- xiv) Failing to provide Student physical therapy;
- xv) Failing to provide occupational therapy;
- xvi) Failing to provide vision therapy;
- xvii) Failing to develop recreational skills;
- xviii) Failing to provide Student the least restrictive environment;
- xix) Failing to provide Student's parents information necessary for their participation in the individualized education program process;
- xx) Failing to provide Student's parents training;
- xxi) Failing to provide adequate adapted physical education goals; and
- xxii) Failing to provide adequate adapted physical education services.

b) Whether California Children's Services violated Student's rights from June 30, 2012 through June 23, 2013, due to the following:

- i) Failing to provide Student adequate assessments in the area of self-help;
- ii) Failing to provide Student adequate goals in the area of self-help;
- iii) Failing to provide Student adequate services in the area of self-help;
- iv) Failing to provide Student an adequate assessment in the area of expressive communication;
- v) Failing to provide Student adequate goals in the area of expressive communication;
- vi) Failing to provide Student adequate services in the area of expressive communication;
- vii) Failing to meet Student's social needs;
- viii) Failing to provide adequate goals for occupational therapy;
- ix) Failing to provide adequate services for occupational therapy;
- x) Failing to provide adequate goals for physical therapy;
- xi) Failing to provide adequate services for physical therapy;

- xii) Failing to provide adequate goals for vision therapy; and
- xiii) Failing to provide adequate services for vision therapy.

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 or California Children’s Services’ exhibit (for example, “S-5, S-6,” or “D-1, D-2,” or “C-1, C-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 will 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.

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. 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.

The parties are ordered to meet and confer by August 22, 2014, as to the schedule of witnesses. The parties shall 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 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 provide the ALJ a witness list on the first day of hearing. Ocean View shall have witnesses available in case agreement on a witness list is not reached. 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. 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.

Student's motion to allow Dr. Marwa Adelbury, Diana Ferman, Michele Lagui, and Ana Maria Smith to testify telephonically is granted. Student's motion to allow Dr. Nasar Elbalalessy, Dr. Amanda Fernandez, Dr. Jeffrey Ho, Dr. Sarah Razi, Dr. Alexandra A. Roche, and Dr. Bassem Younis to testify telephonically is denied without prejudice. Student shall provide Dr. Marwa Adelbury, Diana Ferman, Michele Lagui, and Ana Maria Smith with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Order of Presentation of Evidence. Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by Ocean View, followed by California Children Services. If a witness is to be called by more than one party, each party shall ask questions of the witness so that the witness does not need to return for testimony.

8. Motions. Ocean View's motion to dismiss Student's allegations pertaining to Section 504 of the Rehabilitation Act of 1973 is granted. This issue falls outside the jurisdiction of OAH. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

Student's motion to shift the burden of proof to Ocean View is denied. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. Here, Student is the petitioning party and therefore has the burden of proof. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

The parties' joint motion to audio record the hearing is granted. Only the parties' attorneys may audio record the hearing, and they shall only audio record when the hearing is on the record. Only the ALJ's recording shall be deemed the official transcript of the hearing, unless otherwise ordered. The audio recording may only be used by the attorneys, may not be shared with others, may not be played to any witness, and shall not be published or disseminated in any form or by any means.

At present, no additional prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of August 18, 2014.

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

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. 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.

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

13. Hearing Closed To the Public. At the request of Parent, 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 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 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. 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.

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

IT IS SO ORDERED.

DATE: August 18, 2014

/s/

---

PAUL H. KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings