

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. 2014070442

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 15, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Eileen Cohn, Office of Administrative Hearings (OAH). Parents appeared on behalf of Student. Patrick Balucan, Attorney at Law, 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, which is effective as of August 15, 2014:

1. Hearing Dates, Times, and Location. The hearing shall take place on August 27, 2014, 9:30 a.m. and August 28, 2014, 9:00 a.m. and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.

The hearing shall take place at OAH, 15350 Sherman Way, Suite 300, Van Nuys, California, 91406.

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. Student’s request to withdraw Issues 4 and 11 as set forth in the due process hearing request is granted. At the PHC, Parents requested that issues identified in the due process complaint as issues 4 and 11 be withdrawn, and their request was granted. As such, issues 4 and 11 are not included in the issues set forth for hearing.

B. Issues:

1. Whether District denied Student a free and appropriate public education (FAPE) by failing to implement the April 8, 2013 individual education program (IEP), in the following ways:

a. failing to conduct a monthly meeting between parents and staff (including, teacher occupational therapist, speech pathologist, classroom assistants) to review Student's progress for the purpose of insuring consistency and ongoing communication between school and home;

b. failing to implement a communication goal requiring use of a multi-modal means of communication (including, but not exclusive to, picture, gestures, signs, and verbalizations) to communicate in the classroom in 4 of 5 opportunities across three consecutive days;

c. failing to implement the behavior goal which addresses Student's transition, without tantrums, to and from routine classroom activities, such as occupational therapy, language and speech, and playground activities;

d. failure of the teacher and staff to read and implement the entire IEP;

e. failure, during the 2013-2014 school year, to teach Student new functional and behavior skills to further his independence, and meet his educational needs, as demonstrated by, among other things, failure to provide Student appropriate behavior support by adequately trained personnel to address Student's tantrums, refusing Parents' offer to have Student's applied behavior analysis therapist assist with his transition to the 2013-2014 school year, and failing to address his tantrums as they increased during the school year; and

f. inadequate teacher and staff training in the area of pupils with moderate and severe autism, inadequate classroom management, and parent-teacher communication.

2. Whether District deprived parent of their right to participate in the IEP process at the February 25, 2014 IEP team meeting, or denied Student of an educational benefit, when District personnel did not:

a. consider Parents concerns about Student's goals and services;

b. inform Parents of their right to take the IEP home to review it before signing; and

c. inform Parents of stay put, and instead told Parents they had to sign the IEP or forfeit Student's current placement.

3. Whether District denied Student a FAPE in the February 25, 2014 IEP, in the following ways:

a. failing to develop appropriate goals based on accurate present levels of performance reflecting Student's current strengths and unique needs and based upon current teacher assessments, and setting forth how the goals will be taught, the methodology to be used to teach Student and to measure his progress.;

b. failing to develop a language goal consistent with his previous IEP goal;

c. failing to develop a functional reading goal which addresses Student's mandated alternative curriculum, including readiness skills, and more specifically defines his unique symbol recognition and pre-reading needs so that they can be taught;

d. failing to develop a functional reading goal designed to address Student's unique need to identify safety signs and environmental cues, to improve his ability to access his environment and be part of society, instead of a goal focused on identifying his name;

e. failing to develop functional writing and functional math goals addressing modifications of District core curriculum in "Treasures" and "Envision" to be consistent with Student's alternative curriculum; and

f. failing to develop a functional math goal which furthers Student's ability to function in the community, instead of the functional math goal which requires him to match numerals one through ten to the same corresponding numeral.

4. Whether District denied Student a FAPE during the 2013-2014 school year following the February 25, 2014, IEP team meeting in the following ways:

a. failing to provide Student appropriate behavior support by adequately trained personnel, including failing to address Student's tantrums as they increased during the school year;

b. failing to teach Student new functional and behavior skills to further his independence, and meet his educational needs, as demonstrated, by, among other things, over Parents' objections, tying Student's shoelaces around

his ankles to keep him from removing his shoes, instead of teaching him replacement behaviors;

c. inadequate teacher and staff training in the area of pupils with moderate and severe autism, inadequate classroom management, and parent-teacher communication; and

d. failure of teacher and staff to implement the operative IEP('s).

C. Proposed Remedies.

Parents request placement in the same type of autism program as Student's current program, referred to as ICAP, at a different school site, intensive instructional services, referred to as IIP, by a qualified teacher, a full year of nonpublic agency compensatory education, nonpublic agency behavior services, and a functional behavior assessment by a qualified assessor.

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.

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.

Parents represented that they will be the only witnesses for Student's case. Parents were advised that District is not obligated to call any of the witnesses on its witness list, and

if Parents want District witnesses to testify, they would have to request District's counsel to make District employees available at least five business days before the hearing.

The witness schedule will be finalized at the commencement of the due process hearing.

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. At present telephonic testimony is not anticipated. 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. 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.

8. Motions. No pretrial motions are pending or contemplated. 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 PHC of August 15, 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, Representatives, Parties 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. The hearing shall be closed as no request for it to be open to the public has been made.

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 19, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings