

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

CORONADO UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2014060727

PARENTS ON BEHALF OF STUDENT,

v.

CORONADO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014050511

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 22, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Andrea Tytell, Attorney at Law, appeared on behalf of the Student. Ernest Bell, Attorney at Law, appeared on behalf of the Coronado Unified School District (Coronado). 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 begin at 1:30 p.m. on September 2, 2014, shall continue as needed at 9:00 a.m. on September 3, 4, 9, 10, and 11, 2014, and shall continue thereafter day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at:

Office of Administrative Hearings
1350 Front Street, Suite 3005
San Diego, California 92101

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. The issues at the due process hearing are those listed in the Prehearing Conference Order dated June 23, 2014, with the following exception:

Issue 2(f) is corrected to read: Did Coronado deny Student a free appropriate public education by failing to begin home hospital instruction until after March 5, 2014, even though Student had requested home hospital instruction on January 23, 2014?

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 consecutively paginated, for example, by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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. The parties may exchange exhibits with each other by email if they choose.

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 meet and confer regarding witness scheduling by close of business on Tuesday, August 26, 2014. Coronado agrees to make its employees available to testify as part of Student’s case-in-chief without need for subpoena.

5. 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

6. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student shall present Student’s case-in-chief first and then Coronado will present its case-in-chief. If a witness is to be called by more than one party, both parties will ask all their questions of the witness during the witness’s first appearance to save the witness from having to testify a second time.

7. Motions. During the PHC, Coronado’s counsel requested to audio record the hearing. Coronado’s request is granted on the following conditions: 1) the recording by OAH shall be official record of the hearing; 2) Student’s counsel shall also be permitted to record the hearing with the same restrictions set forth herein; 3) the audio recording(s) shall remain confidential, shall be used only by the attorneys representing the parties, and shall not

be disseminated to any other individual; 4) no portion of the audio recording shall be played to any potential witness in the case without explicit consent from the ALJ hearing the case; 5) the recording equipment shall only be running when the hearing is “on the record” and the recording equipment shall be turned off during recesses, lunch and at any other time when the case is off the record; 6) the hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment; and 7) there shall be no video recording or photography of any type in the hearing room.

No other 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.

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

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 set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. No audio or video recording of any type is permitted in the hearing room without the express permission of the ALJ.

10. Compensatory Education and 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.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services. Should either party discover any need for accommodations for any witness, including accommodations under the Americans with Disabilities Act, that party shall contact Sacramento OAH in writing as soon as possible.

12. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.¹

13. 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

¹ During the PHC, Student requested an open hearing. However, subsequent to the PHC, Student filed a written request to have the hearing closed.

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 4:00 P.M. ON 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.

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

IT IS SO ORDERED.

DATE: August 25, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings