

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LAKE ELSINORE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040189

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 25, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Robert Helfand, Office of Administrative Hearings. Rosa K. Hirji, Attorney at Law, appeared on behalf of Student. Cynthia D. Vargas, Attorney at Law, appeared on behalf of the Lake Elsinore Unified School District. 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 September 9-11 and 16-17, 2014 at the District's offices located at 545 Chaney Street, Lake Elsinore, CA 92530. The hearing shall continue day to day Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered.

The District 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 the witness; and 4) a table for the ALJ, near an electrical outlet. The District 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. The District shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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) Did Lake Elsinore deny Student a free appropriate public education by failing to conduct comprehensive evaluations from April 2, 2012 through January 2014?

b) Did Lake Elsinore deny Student a FAPE in the May 23, 2012 individualized education program by failing to develop an appropriate assessment plan, failing to revise goals, develop a behavior support plan, failing to review Student's academic ability, failing to offer appropriate counseling services, and failing to review Student's eligibility for special education?

c) Did Lake Elsinore fail to materially implement Student's May 23, 2012 IEP by failing to provide Student with 30 minutes of intervention counseling, failing to review the need for an instructional aide, and failing to place Student in a moderate to severe special day class?

d) Did Lake Elsinore deny Student a FAPE in the November 1, 2012 IEP by failing to develop a comprehensive health assessment plan, failing to revise Student's goals, failing to develop a behavior support plan, failing to offer appropriate mental health services, and failing to offer a trained one-to-one behavior aide?

e) Did Lake Elsinore fail to implement Student's November 1, 2012 IEP by failing to provide him with a one-to-one aide and counseling?

f) Did Lake Elsinore deprive Student's parents having meaningful participation in the IEP process by failing to provide a clear offer of FAPE in the area of a one-to-one aide in the November 1, 2012 IEP?

g) Did Lake Ellsinore deny Student a FAPE in the March 14, 2013 IEP by failing to report Student's present levels of performance, changing Student's eligibility category without assessment, failing to contain appropriate goals, failing to offer Student an appropriate educational placement in the least restrictive environment, failing to offer appropriate transition services; and failing to offer appropriate speech and language services?

h) Did Lake Elsinore deny Student a FAPE in the July 3, 2013 IEP by failing to review placement and services, failing to offer counseling and transition services, failing to consider the deterioration of Student's mental health condition, and failing to offer aide support?

i) Did Lake Elsinore deny Student a FAPE in the December 6, 2013 IEP by failing to provide Student with an appropriate education setting, placement and services?

j) Did Lake Elsinore deny Student a FAPE in the January 31, 2014 IEP by failing to offer appropriate goals in the areas of academic knowledge, social/emotional,

behavioral, speech and language, health, physical education, and vocational; failing to offer appropriate placement, services (counseling, speech and language; and behavioral intervention and consultation), and accommodations; and failing to make a clear offer of FAPE in the areas of implementation of additional adult supervision, SAI instruction, and goal oriented activities?

Student's proposed resolutions are: (a) Lake Elsinore to fund Independent Education Evaluations in the areas of functional behavior analysis, educationally related mental health services, and transition; (b) Lake Elsinore to reimburse Student's parents for the cost of the private neuropsychological evaluation by Dr. Ann Simun; (c) Lake Elsinore to adopt as part of Student's IEP all recommendations made By Dr. Simun in her evaluation report; (d) Lake Elsinore to provide Student with a full-time behavior aide and consultation by a behavior specialist; (d) Lake Elsinore to provide Student with intensive individual instruction in reading and functional reading; and (e) Lake Elsinore to provide Student with compensatory education according to proof.

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.

The parties are ordered to meet and confer, no later than September 4, 2014, so as to eliminate any duplicate exhibits from their respective evidence binders.

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 noon on September 4, 2014, as to the schedule of witnesses. The parties shall attempt to reach agreement on a witness list for the first day of hearing. The parties have agreed to 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 shall submit to OAH at the first day of hearing a list of actual witnesses to be called and the anticipated time for needed to complete each witness's testimony.

The following witnesses will be called to testify by Student; Student's parents; Connie Siegel; Carol Nielse; Brian Stewart; Lis Winslow; Brad Trottman; Robin Hamilton; Maria Lianeza; Jamie Lawson; Caroll McNab; Jennifer Edquist; Donna Wolter; Kate Dampier; Felipe Flores; Elizabeth Flores; Tony Pollato; Unnamed security officer; and unnamed classroom teachers from school years 2011-2012, 2012-2013, and 2013-2014.

The following witnesses will be called to testify by District: Donna Wolter; Shannon Pinck; Erin Hill; Kathryn Jones; Jon Hurst; Brad Trottman; Connie Siegel; Jamie Lauren; Felipe Flores; Krisha Edwards; Martha Wallis; Caroll McNab; Maria Lianeza; Robert Harrison; and Kate Dampier.

Student has designated Takesha Cooper, M.D., and Ann Simun, Ph.D., as expert witnesses. Student shall produce to District counsel a copy of the C.V. of each expert witness and any reports or other documents retained by each as to Student, no later than noon on September 4, 2014.

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

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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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.

7. Motions. Student has moved to make an audio tape recording of the hearing to assist counsel at the hearing. Lake Elsinore has orally objected. Lake Elsinore shall file written objections no later than noon on September 4, 2014.

Student has indicated that he may file pre-hearing motions. Either side may file pre-hearing motions no later than noon on September 4, 2014. The opposing party shall file any opposition no later than September 8, 2014 at noon. The motion shall be heard on the first day of the hearing.

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.

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.

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12. Hearing Closed To the Public. At the request of Student, the hearing shall be closed to public.

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 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.

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/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings