

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. 2014060126

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 29, 2014, a telephonic prehearing conference was held before Administrative Law Judge Eileen Cohn, Office of Administrative Hearings. Mother appeared on behalf of Student. Susan B. Winkelman, 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:

1. Hearing Dates, Times, and Location. The hearing shall take place on September 9, 2014, 9:30 a.m. and September 10, 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 the OAH offices located at 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. District's Motion to Dismiss is denied without prejudice.

On August 26, 2014, District filed a PHC statement, which included a motion to dismiss. In that motion, District asserted that Student's educational rights had transferred to Student when he reached the age of 18 on April 25, 2014, and therefore, Parent lacked standing to file the complaint. The parties presented oral arguments. Based upon the undisputed representations of Mother that Student participated in the mediation held on July 9, 2014, and at that time advised District that he authorized Mother to represent him, District's motion is denied without prejudice. At the PHC, the ALJ ordered Student to

appear the first morning of the hearing, September 9, 2014, to confirm under oath his authorization of Mother's representation of his interests in the issues set forth in the due process hearing complaint, his transfer of his educational rights to her for purpose of filing the due process hearing complaint and participating in the due process hearing, and to testify as to the matters in dispute. If Student fails to appear, District may ask the ALJ to reconsider its motion to dismiss.

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

Whether District denied Student a free appropriate public education between May 30, 2012 through May 30, 2014, by failing to make an offer of FAPE, or to implement the individual education program offers the areas of (a) reading, (b) writing and (c) math, as to the following:

- A. The June 14, 2012 IEP;
- B. The October 8, 2012 IEP;
- C. The October 11, 2013, IEP; and
- D. The May 30, 2014, IEP.

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 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. The parties represented that they have already exchanged documents. The parties are advised that any further documents must be exchanged no later than 5:00 p.m. on Tuesday, September 2, 2014, in compliance with Education Code section 56505, subdivision (e)(7), if they. 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 total number of identical tabbed exhibit binders to be created by each party totals four: (i) one for the party to keep, (ii) one to be served on the other party, (iii) one to be brought to the hearing for the ALJ, and (iv) one to be brought to the hearing for use by the 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.

5. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses, except District and Student shall make witnesses under its employ or

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 **5:00 p.m. on Thursday, September 4, 2014**, to reach agreement on 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 witness schedule will be finalized at the commencement of the due process hearing.

The following witnesses will be called to testify by Student: Mother, Student, Mr. Cowen, Ms. Martin, Ms. Pellman, and Ms. D'Amato. District may call the same witnesses, but may also call additional witnesses identified in the attachment to District's PHC statement.

The District 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.

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.

7. Telephonic Testimony. Telephonic testimony has not been requested. 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.

8. 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.

9. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence; however witnesses to be called by both sides will be fully questioned on all issues whenever first called to the stand.

10. Motions. Other than District's Motion to Dismiss, no other pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration establishing good cause as to why the motion was not made prior to or during the PHC of August 29, 2014.

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

12. 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, 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. The parties shall not record the proceedings.

13. 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.

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

15. Hearing Closed To the Public. The hearing shall be closed to the public.

16. 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.

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

IT IS SO ORDERED.

DATE: September 2, 2014

/s/

Eileen Cohn
Administrative Law Judge
Office of Administrative Hearings