

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014070784

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On August 29, 2014, a telephonic prehearing conference was held before Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings. Attorney Candis Watson Bowles, of Disability Rights California, appeared on behalf of Student (Student). Attorney Karen E. Gilyard, of Atkinson, Andelson, Loya, Ruud & Romo, P.C., appeared on behalf of Pasadena 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 10, 11, 23, 24, and 25, 2014, beginning at 9:00 a.m. (except for the first day, which will begin at 10:00 a.m.) and will end at 5:00 p.m., continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ.

The hearing shall take place on at the District's offices, located 351 South Hudson Avenue, 2nd Floor, Pasadena, CA 91109.

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 listed below.

- (1) Did the District deny Student a free appropriate public education by failing to identify and assess Student as a child with exceptional needs, who was entitled to special education placement and services ("child find" duty), after Student entered the District in October 2013?

- (2) During the 2013-14 school year, did the District fail to provide Student with a behavioral intervention plan and, if so, did such failure amount to a procedural violation that denied Student a FAPE?
- (3) During the 2013-14 school year, did the District fail to conduct a functional behavior assessment of Student and, if so, did such failure amount to a procedural violation that denied Student a FAPE?
- (4) During the 2013-14 school year, did the District fail to convene an individualized education program team meeting that was required by Education Code section 56521.1 and, if so, did such procedural failure deny Student a FAPE?
- (5) During the 2013-14 school year, did the District deny Student a FAPE by offering a placement which was not the least restrictive environment?
- (6) During the 2013-14 school year, did the District deny Student a FAPE by failing to provide the following:
 - (a) Direct behavioral interventions, such as behavioral supports, skills building and other rehabilitative interventions, provided by qualified personnel, aides and mentors;
 - (b) Coaching and training of teachers and other school staff in the implementation of positive behavioral supports, skills building, and rehabilitative interventions;
 - (c) Coaching and training of Parent or guardian to participate and otherwise support the behavioral interventions provided at school;
 - (d) Mobilization of community resources, such as the regional center, to determine whether Student may have a developmental disability that contributes to his behaviors; and/or
 - (e) Coordination of school activities with those of Student's non-school providers, in the areas of mental health and public systems, such as Student's psychiatrist, therapists, and counselors?

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. 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 are

to serve their evidence binders on each other by April 28, 2014, in order to comply with Education Code section 56505, subdivision (e)(7). (See Paragraph 7, below.) 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.

If a party intends to rely upon a witness's education and professional experience in presenting testimony, the party must include the curriculum vitae of each such witness as part of the party's exhibits.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously timely 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 September 5, 2014, for purposes of preparing a schedule of witnesses to be presented to the ALJ on the first day of hearing. 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 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 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. If a witness is to be called by more than one party, the parties need be prepared to examine the witness when first called. Except on a motion and good cause shown, a witness will appear and testify once.

6. Telephonic Testimony. Student requested that his expert witness, Kimm R. Campbell, be allowed to testify telephonically because she is out of state. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). The request is granted. Student shall provide the proposed witness, Ms. Campbell, with a complete set of exhibit binders from all parties, 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, 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, which is September 3, 2014.

8. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues, to be followed by District’s presentation of evidence.

9. Motions. No pretrial motions are pending or contemplated. Any motion filed after this date, including motions for any further continuances, 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 prehearing conference of August 29, 2014.

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

11. 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.

12. 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.

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

14. Hearing Closed To the Public. The hearing is closed to the public. However, the Parent may be accompanied during the hearing by her Parent Partner, provided that the Parent Partner not participate in the hearing or otherwise represent the Student or Parent in the due process hearing.

15. 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 and 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the board meeting that will consider the settlement. The hearing dates will not be vacated without this information.

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

IT IS SO ORDERED.

DATE: August 29, 2014

/s/
CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings