

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LEGAL GUARDIAN ON BEHALF OF
STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014050241

ORDER FOLLOWING PREHEARING
CONFERENCE OF SEPTEMBER 12,
2014

On September 12, 2014, a telephonic prehearing conference was held before Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings. Eric Menyuk, Attorney at Law, appeared on behalf of Student. **** Attorney at Law, appeared on behalf of the Los Angeles Unified School District. The ALJ recorded the prehearing conference.

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 22, 23, 24, 29, and 30, 2014, at the Office of Administrative Hearings, located at **15350 Sherman Way, Suite 300, Van Nuys, California, 91406**, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on September 22 and 29, 2014, at 9:00 a.m. each other day, unless otherwise ordered.

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.

A. Did Los Angeles Unified deny Student a free appropriate public education by convening Student’s annual individualized education program team meeting, which was due by November 11, 2012, more than three months late?

B. Did Los Angeles Unified deny Student a FAPE in his IEP’s dated February 20, 2013, April 5, 2013, April 12, 2013, and October 14, 2013, by:

i. Failing to modify Student's goals and services when he failed to meet his goals or make progress in the general education curriculum?

ii. Failing to provide interventions when Student failed to make progress in the general education curriculum?

C. Did Los Angeles Unified deny Student a FAPE by committing the following procedural violations?

i. Holding IEP team meetings on April 5 and 12, 2013, outside the presence of Student's legal guardian?

ii. Failing to consider the input of Student's legal guardian at the October 14, 2013 IEP team meeting?

D. Did Los Angeles Unified deny Student a FAPE in the IEP dated April 2, 2014, by:

i. Failing to develop appropriate goals to address Student's unique needs?

ii. Failing to provide appropriate interventions and services to address Student's continued lack of progress on his goals and in his curriculum?

iii. Failing to transfer Student to Chatsworth High School upon the request of his guardian?

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 absent a showing of good cause as to why the exhibit was not exchanged timely, 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, and at the discretion of the ALJ.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. The parties 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.

At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issues presented.

5. Scope of Witness Examination. Student bears the burden of proof and shall present his evidence first. Where Student and Los Angeles Unified intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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. Only one round of redirect followed by one round of re-cross examination will be permitted, unless otherwise ordered.

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.

[[Name of party]'s motion to allow [Witness name] to testify telephonically is granted/denied.] [[Name of party] shall provide [Name of party] with a complete exhibit binder from each party, 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.]

7. Timely Disclosure of Witnesses/Exhibits. [The request of [Name of party] to delay disclosure of witnesses/exhibits until [Number of] days prior to the hearing is denied/granted, and witnesses/exhibits shall be exchanged by [Date] at [Time] a.m./p.m.] [Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits “at least” five business days prior to the hearing.] [The OAH order of [Date], specifically ordered the production of lists of all witnesses/documents by an earlier date, to wit: at least three business days prior to this PHC.]

8. Motions.

Audio Recording of the Hearing: It is within the discretion of the ALJ to permit the audio recording of a due process hearing. Neither party requested permission to audio record the hearing. Either or both parties will be permitted to audio record the hearing on the following conditions: 1) that OAH’s recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ’s recording, in order to avoid recording conversations while off the record; and 3) that operation of the party’s recording mechanism will not be allowed to delay the hearing.

[Rulings on motions made at PHC.] [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 prehearing conference of [Date].]

At present no prehearing motions are pending or contemplated, except for the District’s pending motion concerning attorneys’ fees. Student expects to make one or more motions *in limine* at hearing. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of [DATE]. **[MAY NOT BE APPROPRIATE FOR UNREPRESENTED PARTIES.]**

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.

13. Special Needs and Accommodations. A [Type of language] language interpreter [or other accommodation] is required.

At present neither party anticipates the need for special accommodation for any witness or party, or for translation services. Should any need for a special accommodation arise before or during the hearing, the party in need of the accommodation shall inform OAH or the ALJ without delay.

14. Hearing Open/Closed To the Public. [At the request of the parent, the hearing will be open to the public.]

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 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.

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

IT IS SO ORDERED.

DATE: September 12, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings