

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014100699

ORDER FOLLOWING EXPEDITED
PRE-HEARING CONFERENCE AND
DISMISSING NON-JURISDICTIONAL
CLAIMS

On November 10, 2014, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference in the expedited portion of this matter. Attorney Rosa Hirji appeared on Student's behalf. Attorney Christopher Hernandez appeared on behalf Manhattan Beach 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 expedited hearing shall take place on November 18, 2014 at 9:30 a.m., November 19, 20, 24, 2014, beginning at 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 on at the District's offices, located at 325 South Peck Avenue, Manhattan Beach, California 90266. The school district shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 .), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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.

The parties are directed to be familiar with 20 United States Code section 1415(k)(5) prior to the start of the hearing.

2. Issues. The issues at the expedited due process hearing are:

- (1) Did District initiate a disciplinary change of Student's placement for more than 10 days because Student violated a code of student conduct, entitling Student to a manifestation determination, pursuant to title 20 United States Code section 1415(k)?
- (2) If so, was the conduct that resulted in the change of placement a manifestation of the Student's disability, as defined in title 20 United States Code section 1415(k)(1)(E)?

Additionally, Student contends that he may be entitled to compensatory education as a remedy for a violation of section 1415(k). The parties are directed to be familiar with 20 United States Code section 1415(k) prior to the start of the hearing.

OAH does not have jurisdiction to hear Student's claims in the complaint arising under the Rehabilitation Act of 1973, title 42 United States Code section 1983, and related federal and state statutes, and those claims are therefore dismissed for lack of OAH jurisdiction.

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 shall meet and confer at 9:00 a.m. Thursday November 13, 2014, in order to discuss the scope of exhibits in light of the narrow issues in this expedited matter, to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties shall not serve exhibits on OAH prior to the hearing.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

District shall provide an authenticated copy of the 2014-2015 school calendar as one of its 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 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 on November 13, 2014 at 9:00 a.m. as to the scope and schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. The schedule shall include the time contemplated for telephonic witnesses, as listed discussed below.

Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. 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.

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.

Student's motion to allow six witnesses from Heritage Residential Treatment Center in Utah is granted. Student shall provide the witnesses with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing. The witnesses shall testify from a room that is private and without sound distractions. District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

7. Motions. District advised during the PHC that it intends to renew its motion to dismiss the expedited hearing based upon new facts and circumstances. District must file and serve its motion no later than 4:00 p.m. on Wednesday November 12, 2014. Student may file an opposition no later than 4:00 p.m. on Friday November 14, 2014.

At present no other 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 expedited prehearing conference of November 10, 2014.

8. Stipulations. The parties are encouraged to enter into stipulations to pertinent facts, contentions or resolutions. 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 one shall be permitted to engage in text messaging while the hearing is on the record.

Student requests permission to record the hearing proceedings; District does not oppose. Student's request to record the Due Process Hearing is granted subject to the following conditions: (1) Student shall turn on and off the recording device at the same time that the ALJ is on and off the record; (2) Student shall not play any part of the recording for a prospective witness; (3) Student shall not use this recording in any subsequent Due Process Hearing, and (4) Student shall dispose of the unofficial recording when this matter (as well as any appeals) is concluded. The recording is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ.

10. 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. Any claim for compensatory education in this expedited hearing shall be consistent with the remedies available under 20 United States Code section 1415(k).

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

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

12. Hearing Closed To the 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 resolving the expedited claim 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.

Because this is an expedited hearing, the hearing dates will not be vacated if a settlement is reached subject to board approval. Student must either withdraw the expedited claim, or proceed to hearing.

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

IT IS SO ORDERED.

DATE: November 10, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings