

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014110706

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 9, 2015, a telephonic prehearing conference was held before Administrative Law Judge Paul H. Kamoroff, Office of Administrative Hearings. Mark Woodsmall, Attorney at Law, appeared on behalf of Parents on behalf of Student. Tracy Petznick Johnson, Attorney at Law, appeared on behalf of the Placentia-Yorba Linda 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 February 17, 18 and 19, 2015, and continuing day by day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. on the first day, and at 9:00 a.m. on each subsequent day, unless otherwise ordered. The hearing shall take place at District's offices located at 1301 E. Orangethorpe Ave., Room 200, Placentia, CA 92670.

District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Student and his representatives; 2) a table for District's legal representative and special education representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. District shall provide drinking water and tissue 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.

District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 1210 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.

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

a) Whether District denied Student a free appropriate public education for the 2014-2015 school year by failing to offer an appropriate educational placement?

b) Whether District’s Individualized Education Program team meeting of August 28, 2014, denied Student a FAPE by impeding Parent’s ability to participate in the development of Student’s IEP, by:

i) Failing to consider the findings of Student’s independent experts; and

ii) Hindering Parent’s right to consent to the proposed educational program?

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 shall serve 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.

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

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 Christine Accardo, Layne Wells, R. Justin Boyd and Paul Lipkin to testify telephonically is granted. Student shall provide Christine Accardo, Layne Wells, R. Justin Boyd and Paul Lipkin with a complete exhibit binder from each party, 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.

7. Timely Disclosure of Exhibits. The request of District to delay providing Student with copies of witness resumes until four days prior to the hearing is granted.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by District. If a witness is to be called by more than one party, each party shall ask questions of the witness so that the witness does not need to return for testimony.

9. Motions. On February 5, 2015, Student filed a motion for change of venue from District's office to OAH Van Nuys. District opposed the motion.

Federal and state law provides that a due process hearing must be held in a place "reasonably convenient" to the student and parents. (Ed. Code, § 56505, subd. (b).) Reasonably convenient does not mean that the hearing may be located anywhere that the parent decides is convenient. To be reasonable, there must be some balance of interest between what is convenient for the parent and child on one side and what is efficient for the

district or other parties on the other side. Due process hearings are generally scheduled at either the school district office, the office of the Special Education Local Plan Area to which the District belongs, or a regional office of OAH. Here, District's office is within four miles of Student's residence and is therefore reasonably convenient for parents and Student. In contrast, OAH Van Nuys is located over 50 miles from Student's residence. For the foregoing reasons, Student's motion to change venue is denied.

The parties' request to audio record the hearing is granted. Only the parties' attorneys may audio record the hearing, and they shall only audio record when the hearing is on the record. Only the ALJ's recording shall be deemed the official transcript of the hearing, unless otherwise ordered. The audio recording may only be used by the attorneys, may not be shared with others, may not be played to any witness, and may not be published or disseminated in any form or by any means.

No additional 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 February 9, 2015.

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.

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 the need is made known. Additional information concerning requests for reasonable accommodations is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

14. Hearing Open 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: February 10, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings