

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014110630
v.	
WESTMINSTER SCHOOL DISTRICT,	
WESTMINSTER SCHOOL DISTRICT,	OAH Case No. 2014080827
v.	
PARENT ON BEHALF OF STUDENT.	ORDER FOLLOWING PREHEARING CONFERENCE

On February 9, 2014, a telephonic prehearing conference was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Patricia Valenzuela, Attorney at Law, and Margot Stevens, Attorney at Law, appeared on behalf of Student and Student's parent. Ernest Bell, Attorney at Law, and Reagan Lopez, Executive Director of Student Services, appeared on behalf of the Westminster 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, 19, and 23, 2015, beginning at 1:30 p.m. on February 17 and 23, 2015, and at 9:00 a.m. on the remaining days, and shall continue day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall take place at:

WOCCSE
5832 Bolsa Ave
Huntington Beach, CA 92649

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.

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

Student’s Issues:

a) Did District deny Student a free appropriate public education in the September 30, 2014 individualized education program by failing to offer Student appropriate special education services designed to meet Student’s needs, including failing to offer sufficient specialized academic instruction or tutoring services, and failing to provide books on tape for use by Student at home?

b) Did District deny Student a FAPE during the fall of the 2014-2015 school year by changing Student’s educational placement by providing accommodations not included in Student’s IEP without first providing Student’s parent with prior written notice or obtaining the consent of Student’s parent?

District’s Issues:

c) Were Student’s June 6, 2014 multidisciplinary assessments appropriate and in compliance with the requirements of state and federal law?

d) Did District deny Student a FAPE by charging Student’s parent a fee for copying Student’s records in response to the records requests dated March 20, 2014, and November 25, 2014?

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 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 ordered to meet and confer by close of business on February 9, 2015, regarding witnesses and witness scheduling. District has agreed to make its current employees available to testify without need for subpoena with the exception of the three witnesses discussed in District's motion in limine below.

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 Dr. Pantea Sharifi-Hannauer and Dr. Jason Dorin to testify telephonically is granted. Student shall provide these two witnesses with a complete set of exhibit binders 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 witnesses.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student will present Student's case-in-chief first and District will present its case-in-chief second. If a witness is to be called by more than one party, both parties will ask all their questions of the witness at that time to prevent the need for the witness to be called to testify twice.

8. Motions. During the PHC, Student made a motion to permit audio recording of the hearing. Student's motion is granted on following conditions: 1) The recording by OAH shall be official record of the hearing; 2) The District may also audio record the

hearing; 3) The audio recording(s) shall remain confidential in the same manner and to the same extent as the hearing itself; 4) If a motion to exclude witnesses is made and granted, no portion of the audio recording shall be played to any potential witness in the case without explicit consent from the ALJ hearing the case; 5) The recording equipment shall only be running when the hearing is “on the record” and the recording equipment shall be turned off during recesses, lunch and at any other time when the case is off the record; 5) The hearing will not be stopped or delayed at any time to accommodate the recordings or any problems with the recording equipment; 6) There is to be no video recording or photography of any type during the hearing; and 7) Only counsel for the two parties will be permitted to record the hearing.

District gave notice that it may file a motion in limine to exclude the testimony of three of the witnesses listed on Student’s witness list. Student gave notice that Student may file a motion in limine to exclude one of the exhibits listed on District’s exhibit list. Any moving papers for either of those two motions shall be filed and served on the other party by close of business on Wednesday, February 11, 2015.

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

10. 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. Aside from the audio recording by counsel mentioned above, there is to be no audio or video recording or photography of any type by any witness or party during the hearing.

11. 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.

12. 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 a request for reasonable accommodation is available on OAH’s website at:

<http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. 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 **4:00 P.M. ON THE FRIDAY** 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.

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

IT IS SO ORDERED.

DATE: February 9, 2015

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings