

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2014120059

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014120530

**CORRECTED ORDER FOLLOWING
PRE-HEARING CONFERENCE**

This Order corrects the hearing location, indicated in bold type below. No other changes have been made.

On February 9, 2015, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings (OAH). Janeen Steel, Attorney at Law, Edith Madrid, Attorney at Law, and Dean Conklin, Attorney at Law, appeared on behalf of the Student and Student's Educational Rights Holder (collectively, Student). Diane M. Willis, Attorney at Law, appeared on behalf of the Los Angeles Unified School District (LAUSD). Darin W. Barber, Attorney at Law, appeared on behalf of Simi Valley Unified School District. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following Order:

1. Hearing Dates, Times, and Location. The hearing shall take place on February 24 through 26, 2015, and March 3 through 5, 2015, and continue day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the first day of hearing shall begin at 9:30 a.m., and all other hearing days shall begin at 9:00 a.m.

The hearing shall take place at the offices of OAH, located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406.

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 was not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.¹

Student’s Issues

A. Whether LAUSD deprived Student of a free appropriate public education by reason of the following:

1. Failing to timely assess Student’s behavior from April 19, 2013, through the completion of the functional behavioral assessment report on February 21, 2014;
2. Failing to conduct an appropriate FBA in January 2014;
3. Failing to conduct an appropriate educationally related mental health services assessment (ERMHS assessment), because the assessor did not (a) evaluate Student’s need for residential placement; and did not (b) evaluate Student’s mental health needs as they related to Student’s academic functioning;
4. Failing to conduct an appropriate psychoeducational assessment, because (a) the assessor did not interview or obtain reports from staff members at Student’s residence; (b) the assessor did not provide a valid description of Student’s social-emotional functioning and needs; (c) the assessor deferred an opinion as to Student’s eligibility and placement to the individualized education program team; and (d) the assessor did not appropriately analyze the test results;
5. The IEP team failed to discuss residential placement as a placement option at the October 21, 2014, IEP meeting;
6. At the October 21, 2014, IEP meeting, the IEP team failed to review the independent educational evaluation performed by Dr. Mary Large;
7. Predetermining Student’s placement at the October 21, 2014, IEP meeting with respect to residential placement,
8. Predetermining services and placement at the February 26, 2014, IEP meeting by not offering a one-to-one aide;
9. Failing to offer Student an appropriate one-to-one behavioral aide from April 13, 2013, to the time of filing the Complaint;
10. Failing to develop appropriate Behavior Support Plans in the June 4, 2013, IEP, the February 26, 2014, IEP, and the October 21, 2014, IEP,
11. Failing to offer residential placement in the IEPs of February 26,

¹ In Student’s Amended PHC Statement, filed on February 6, 2014, Student specifically withdrew Issue 5 of her Complaint, which constituted a claim that LAUSD failed to provide Student an appropriate transition plan from June 4, 2013, to the present. Therefore, that issue is not listed as an issue for hearing.

2014, and October 21, 2014; and

12. Failing to offer appropriate accommodations in the October 21, 2014, IEP.

B. Whether either LAUSD or Simi Valley is responsible for funding a residential placement for Student.

LAUSD's Issues

A. Whether LAUSD's psychoeducational assessment conducted in January 2014 was appropriate, such that Student is not entitled to an IEE at LAUSD's expense.

B. Whether LAUSD's ERMHS assessment conducted in January 2014 was appropriate, such that Student is not entitled to an IEE at LAUSD's expense.

C. Whether LAUSD's FBA conducted in January 2014 was appropriate, such that Student is not entitled to an IEE at LAUSD's expense.

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 whether it is a Student or LAUSD exhibit (for example, "S-5, S-6, or D-1, D-2"), and shall place the letters "SV" in front of the exhibit to designate that it is a Simi Valley Unified School District exhibit. It is preferred that each party's exhibits shall be consecutively numbered, by Bates-stamp or other similar method, beginning with the first page of the first exhibit and ending with the last page of the last exhibit. Alternatively, each exhibit shall be internally paginated by exhibit. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their final exhibit lists on each other and file them with OAH, and shall serve their exhibit binders on each other, all 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's exhibit list and not previously timely exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that the exhibit is admissible evidence.

4. Witnesses. The parties shall exchange their final exhibit lists and file them with OAH in accordance with Education Code section 56505, subdivision (e)(7). 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. No party shall be permitted to call any witnesses not disclosed in the party's final witness list except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer as to the scheduling of witnesses, and shall be prepared at the commencement of the first day of hearing to present a schedule of witnesses for the first day of hearing. During the hearing, the parties shall keep the ALJ and each other apprised of the witness schedule. The parties shall be prepared at the beginning of the hearing, as well as at all times during the hearing, to discuss the witnesses to be presented, the order in which they will be called, and the amount of time the testimony of each witness is expected to take. The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

The ALJ has discretion to limit the number of witnesses who testify and to set the length of time allowed for the testimony of each witness. The parties are encouraged to review and curtail 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 should anticipate that, except for purposes of rebuttal or impeachment, witnesses who are listed on the witness lists of more than one party will only be permitted to be called to testify once.

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, at the discretion of the ALJ.

6. Telephonic Testimony. No party has moved for any witness to appear by telephone. 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 all parties have 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 time that the witness is to testify, 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. Unless otherwise ordered, each such witness shall testify via a land-line telephone and while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Motions. Student filed a Motion for Stay Put prior to the PHC, to which no party filed opposition. The motion was heard at the PHC. As of the time of the PHC, Student's placement was that which was requested in the Motion for Stay Put. Accordingly, the motion is denied, as moot. At the PHC, Student's counsel requested that the ALJ order that the Student's current placement constitute her stay put placement. The ALJ declines to make any determination as to Student's stay put placement at this time, as there is no present controversy regarding that issue.

Also prior to the PHC, Simi Valley filed a motion to dismiss, contending that it is not responsible for Student's residential placement pursuant to several statutes, including Education Code sections 48204 and 56325. The motion was opposed by both Student and

LAUSD. The motion was argued at the PHC, and the ALJ took the motion under submission. The motion requires factual determinations regarding the applicability of the statutes upon which the parties rely to the circumstances of this case, and therefore renders the motion one for summary judgment. OAH does not generally have the authority to render summary judgments, and therefore the motion is denied. At the PHC, counsel for Simi Valley requested that, if the motion were denied, the issue presented in the motion be bifurcated from the remainder of the case, such that the facts concerning the motion may be presented first. The motion to bifurcate is denied. However, to the extent practicable, Simi Valley may present its case first at hearing.

At the PHC, Student and Simi Valley moved to audio record the due process hearing. The motion is granted, subject to the following:

1. OAH's audio recording shall be the official record of the hearing;
2. No party shall audio record any matter when the proceedings are off the record;
3. Unless otherwise ordered, the party's audio recordings, and any transcripts thereof, shall remain in the sole possession and custody of counsel for that party. Further, unless otherwise ordered, the audio recordings, or any transcripts thereof, shall not be made available to the public, they shall not be made available online, and they shall not be listened to or read, as applicable, by any person who is, or who is expected to be, a witness in the case.

Any additional 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 PHC of February 9, 2015.

8. Order of Presentation of Evidence. This matter is consolidated, and involves three parties. The order of presentation of evidence shall be as follows, to the extent practicable: Simi Valley Unified School District; Student, and LAUSD.

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

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing, unless permission is obtained from the ALJ.

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, no party anticipates the need for special accommodations for any witness or party. Additionally, at present, no party anticipates the need for interpreter or translation services. A party or participant in this case, such as a witness, who requires reasonable accommodations to participate in the hearing may contact the assigned OAH calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or at (916)-263-0880, as soon as the need becomes known. Additional information concerning a request for reasonable accommodations 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 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 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.

15. Failure to comply with this Order or with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: February 13, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings

