

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SEQUOIA UNION HIGH SCHOOL DISTRICT,	OAH Case No. 2015010235
SEQUOIA UNION HIGH SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2014100536 ORDER FOLLOWING PREHEARING CONFERENCE; GRANTING REQUEST TO CONTINUE; AND SETTING DUE PROCESS HEARING DATES

On February 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Adeniyi A. Ayoade, Office of Administrative Hearings. Parents, and Susan Foley, Attorney at Law, appeared on behalf of Student. Kathryn E. Meola and Lance Alarcon, Attorneys at Law, appeared on behalf of the Sequoia Union High School District. The prehearing conference was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Motion to Continue Hearing Date. In her February 20, 2015 prehearing conference statement Student requested a continuance of the hearing in this matter. The request was heard on the record. Sequoia Union opposed the request, and the parties presented oral arguments regarding Student's motion to continue the hearing date.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of

the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

After considering both parties' arguments, the undersigned reviewed the request to continue the hearing date for good cause, and considered all relevant facts and circumstances. Good cause was established for a short continuance and accordingly, the due process hearing dates were continued from March 2, 2015, to March 24-26, 2015 as indicated below.

2. Hearing Dates, Times, and Location. The hearing in these matters shall take place at Sequoia Union's offices located at 480 James Ave., Redwood City, CA 94062. The hearing shall take place on March 24-26, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., except for March 24, 2015 when the hearing will begin at 9:30 a.m.

Sequoia Union 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. At a minimum, Sequoia Union shall provide a hearing room with separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the Sequoia Union's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. Sequoia Union shall ensure that all parties, witnesses and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities which will be used during the hearing are accessible.

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.

3. Issues and Proposed Resolutions. The issues at the due process hearing are those alleged in Student's and Sequoia Union's separate requests for due process hearing (complaints).¹ As necessary, the issues have been clarified and reframed for clarity, as set forth herein below:

STUDENT'S ISSUES

- 1) Did Sequoia Union deny Student a free appropriate public education (FAPE) by failing in its child-find obligations to Student when it failed to assess Student for special education eligibility from August 2013 through May 21, 2014?
- 2) Did Sequoia Union deny Student a FAPE by failing to make an offer of placement or services to Student at the May 21, 2014 individualized education program team meeting?
- 3) Did Sequoia Union deny Student a FAPE through its August 27, 2014 IEP offer to Student because the IEP was not designed to provide meaningful educational benefit to Student because the IEP:
 - a. failed to offer Student a classroom placement with a low teacher-to-student ratio;
 - b. failed to offer Student mental health services or goals;
 - c. failed to state the frequencies and durations of the individual therapy, group therapy, family therapy, occupational therapy and other services offered to Student; and
 - d. denied parents meaningful participation in the IEP process by its failure to state the frequencies and durations of services offered?

SEQUOIA UNION'S ISSUE

- 1) Did Sequoia Union's August 27, 2014 IEP offer constitute an offer of FAPE to Student, so that Sequoia Union may implement the IEP without parental consent?

¹ Any issue(s) not identified in the complaints, and/or permitted by this order, shall be included only upon OAH granting a motion to amend the complaint. All amendments to the complaints shall comply with the requirements of California Education Code section 56502, subdivision (e), and such amendment will restart all applicable timelines for the due process hearing in this matter. (20 U.S.C. § 1415(c)(2)(E)(ii).)

PROPOSED RESOLUTION: As a proposed resolution, Student seeks an order finding her the prevailing party, and directing Sequoia Union to reimburse her parents the costs of all educational expenses incurred by them from August 2013 to the present time. On its part, Sequoia Union requests that OAH finds that the August 27, 2014 IEP constitutes a FAPE offer to Student, and that Sequoia Union may implement the IEP without parental consent. In the alternative, Sequoia Union requests that OAH finds that Sequoia Union is relieved of its obligations to provide FAPE to Student if parents fail to permit Sequoia Union the opportunity to implement Student's August 27, 2014 IEP.

4. 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 in a way that makes clear the party offering it (such as "S1" or "D2"). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party 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 a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

5. 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 to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order.

The parties are ordered to meet and prepare a joint or individual proposed witness schedule(s). The proposed witness schedule(s) shall identify the witnesses each party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for 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 their testimony.

6. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

7. Telephonic Testimony. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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. Neither party requested telephonic testimony.

8. Electronic Recording of Hearing.

a. Audio Recording. The following conditions apply to any recording: 1) OAH's recording is the only official recording; 2) the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Both parties may record the proceedings.

b. Video Recording: No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

9. Timely Disclosure of Witnesses/Exhibits. The parties are to comply with Education Code section 56505, subdivision (e)(7), that provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

10. Order of Presentation of Evidence. In these consolidated matters, Student shall present her case first followed by Sequoia Union. If a witness is to be called by both parties, counsel shall be prepared to ask their questions of the witness – direct and cross so as to prevent the need for the witness to be recalled.

11. Motions. Unless addressed herein, no other pretrial motion is pending. 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.

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

13. 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.

14. Compensatory Education and 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.

15. Special Needs and Accommodations. 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, or the OAH ADA Coordinator **at 916-263-0880 or OAHADA@dgs.ca.gov** 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>. At present neither party has requested any special accommodation for any witness or party, or for interpreter services.

16. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

17. 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.

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

IT IS SO ORDERED.

DATE: February 23, 2015

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings