

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

BUENA PARK SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2015010467

ORDER FOLLOWING PREHEARING
CONFERENCE

On March 9, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Marian H. Tully, Office of Administrative Hearings. Attorney Karen E. Gilyard appeared on behalf of Buena Park School District (District). Counsel for Student was unavailable. Advocate Hamlet Yarijanian, from the Law Offices of Abraham Labbad, appeared on behalf of Student. 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 March 16, 17, 18, and 19, 2015, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin at 1:30 p.m. the first day and at 9:00 a.m. all other days and end at 5:00 p.m. unless otherwise ordered.

The hearing shall take place at District's offices located at 6885 Orangethorpe Avenue, Buena Park, California, 90620. 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 and Proposed Resolutions. The issues at the due process hearing are:

- a) Does District have the right to assess Student without parental permission as set forth in assessment plans dated March 6, 2014, and May 27, 2014?
- b) Were District's multidisciplinary assessment dated October 11, 2013, and occupational therapy assessment dated February 26, 2014, appropriate?

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 the ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses’ testimony. 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. Respondents 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 shall exchange, and provide the ALJ a copy, of 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, subdivision (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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. If a witness is to be called by more than one party, the

party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need appear and testify only once.

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 witness testify via a landline from a private location and 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. Neither party requested telephonic testimony from any witness at the PHC.

7. Timely Disclosure of Witnesses/Exhibits. District timely disclosed witness and exhibit lists. Student's PHC statement, witness and exhibit lists did not comply with Education Code section 56505, subdivision (e)(7) or the Scheduling Order in this case. Student was ordered to file an amended witness and exhibit list by 5:00 p.m., March 9, 2015. Student timely filed an amended PHC statement which included a witness and exhibit list.

8. Order of Presentation of Evidence. As petitioner, District shall proceed first.

9. Motions. Student filed a Motion to Consolidate this matter with OAH case number 2015030183. The motion was argued during the PHC and denied in a separate order.

Student requested permission to make a personal audio recording for counsel's exclusive use to prepare for hearing and closing argument. District did not object. The sole and official record of the hearing is the OAH recording during the hearing. Student's counsel is permitted to make a personal audio recording for his/her use in representing Student. The recording will not be shared with or played to any witness of potential witness. The recording will be turned on and off at the same time the ALJ goes off the record in order to avoid recording off the record conversations. Operation of the party's recording mechanism will not be allowed to delay the hearing. No delays will be allowed, or accommodations made, to facilitate personal recording. No other recording of any kind is permitted.

No other 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 PHC of March 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. No recording of any kind is permitted.

12. Special Needs and Accommodations. Student's PHC statement states that Student does not anticipate the need for an interpreter. Student's complaint in OAH case number 2015030183 requests a Romanian interpreter for all proceedings. Student shall confirm the need for an interpreter with OAH by 5:00 p.m. March 11, 2015. At present no party anticipates the need for any other special accommodation for any witness or party.

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>.

13. The Hearing is 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 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: March 09, 2015

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings