

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015040570

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 22, 2015, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings, held a telephonic prehearing conference. Attorney Patrick Balucan appeared on behalf of Los Angeles Unified School District. Attorney Patricia Valenzuela appeared on Student's behalf. The PHC was recorded. Based upon discussion with the parties, the ALJ makes the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place on June 2, 2015, at 9:30 a.m., and June 3, 2015 at 9:00 a.m., unless otherwise ordered, and continuing day to day Monday through Thursday, at the ALJ's discretion, at OAH's Van Nuys office 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 is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issue and Proposed Resolution. The issue and proposed resolution at the due process hearing is:

Did District conduct an appropriate speech and language assessment of Student such that District is not required to provide Student with an independent educational assessment at public 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 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 document with a separate date shall be separately identified. Each exhibit binder shall contain a detailed table of contents, including the date and title of the exhibit. The parties represent that they have served 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 shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties shall not serve exhibits on OAH prior to the hearing.

The parties shall exchange 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, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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 May 28, 2015, as to the schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. The 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.

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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of 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 witnesses' testimony.

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.

7. Motions. Student made a motion to exclude all witnesses testifying at the hearing from the hearing room during testimony, except for Student's parents. Student's request is granted, providing, however, that District's representative shall be permitted to remain in the hearing room at all times, whether or not the representative testifies at the hearing.

No 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 May 22, 2015.

8. Audiotaping of PHC and Hearing. Student's request to audiotape the prehearing conference in order to have "a complete record" is denied. Student may request a transcript of the PHC from OAH.

Student's request to audiotape the hearing is granted subject to the following conditions, which shall be applicable to both parties: (1) Such audiotapes shall be used only for review and preparation; (2) Parties shall turn the recording device on and off at the same time that the ALJ is on and off the record; (3) Parties shall not play any part of the recording for a prospective witness; (4) Parties shall not use this recording in any subsequent due process hearing, and (5) Parties shall dispose of the unofficial recording when this matter (as well as any appeals) is concluded. Any recording made by either party is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ. OAH's recording is the official record unless otherwise ordered by the hearing ALJ.

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.

11. Special Needs and Accommodations. At present neither party requested special accommodations, including the services of an interpreter. 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>.

12. Hearing Closed To the Public. The hearing is closed to the public.

13. 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.

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

IT IS SO ORDERED.

DATE: May 22, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings