

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050165

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 13, 2015, a telephonic prehearing conference was held before Administrative Law Judge Laurie Gorsline, Office of Administrative Hearings. Max Goldman, Attorney at Law, appeared on behalf of Parents on behalf of Student. Mary Kellogg, Attorney at Law, appeared on behalf of the Los Angeles Unified 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 July 21, 22, 23, and 27, 2015, and continue day by day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on the first day, and at 9:00 a.m. on each subsequent day, unless otherwise ordered.

The hearing shall take place at OAH's regional office located at 15350 Sherman Way, Suite 300, Van Nuys, CA 91406. OAH facilities fully comply 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 were discussed and clarified during the PHC and are listed below.¹ The issues at the due process hearing, and proposed resolutions, are listed below.

- (1) Whether District denied Student a free appropriate public education by failing to properly assess him as follows:
 - a. Failing to conduct an updated psychoeducational evaluation between April 23, 2013 and April 23, 2015;
 - b. Failing to conduct an updated evaluation in the area of behavior between April 23, 2013 and April 23, 2015;
 - c. Failing to conduct an assistive technology assessment between April 23, 2013 and April 23, 2015;
- (2) Whether District denied Student a FAPE between April 23, 2013 and the January 2014 IEP by failing to offer Student a placement in a safe environment²;
- (3) Whether District denied Student a FAPE in the January 2014 IEP, including any amendments thereto, by:
 - a. Failing to accurately state Student's present levels of performance and provide appropriate and measurable annual goals;
 - b. Failing to provide research-based interventions;
 - c. Failing to offer a safe environment;
 - d. Predetermining its offer of placement and services;
- (4) Whether District denied Student a FAPE by failing to timely conduct an annual IEP team meeting after the January 2014 IEP team meeting;
- (5) Whether District denied Student a FAPE by failing to keep or provide accurate written records regarding Student's behavior incidents to Parents prior to, at, or in the March 2015 IEP;
- (6) Whether District denied Student a FAPE in the March 2015 IEP by:
 - a. Failing to offer an appropriate educational placement;
 - b. Failing to provide Student with a safe environment;

¹ The complaint states that Parents reside in Beverly Hills, but that Student is served by the Los Angeles Unified School District. On the first day of hearing, the parties shall be prepared to explain why Student is served by Los Angeles rather than Beverly Hills Unified School District.

² On the first day of hearing prior to the first witness' testimony, Student shall make an offer of proof as to why this issue is not barred by the statute of limitations.

- c. Failing to offer appropriate behavior support in the form of aide support and related supervision of the aide;
- d. Failing to offer appropriate educationally-related mental health services;
- e. Failing to offer appropriate speech and language services;
- f. Failing to offer appropriate assistive technology support;
- g. Failing to offer occupational therapy services;
- h. Failing to accurately state Student's present levels of performance and provide appropriate and measurable annual goals;
- i. Failing to provide research-based interventions;
- j. Predetermining its offer of placement and services;
- k. Failing to consider the findings of Student's independent experts;
- l. Failing to adequately describe Student's behavioral services in the IEP document in the summary of services and the FAPE summary grid;
- m. Failing to properly document in the IEP the behavioral incident which resulted in Student's removal from Vista;
- n. Failing to document Parents' concerns in the IEP document;

(7) Whether District denied Student a FAPE by failing to provide prior written notice in response to Parent's request in or about March 2015 for an alternative non-public school placement, additional aide support and non-public agency based behavioral consultation/supervision services.

To remedy Student's issues, he seeks an educational placement at a non-public school with transportation, non-public agency based behavior intervention services and supervision, non-public agency based services for speech and language and occupational therapy, assistive technology support, educationally-related mental health services, extended school year services, an independent psycho-educational evaluation and independent evaluations in the areas of assistive technology and behavior, compensatory education services, and reimbursement for privately funded placement and services.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted herein or otherwise ordered by the ALJ, 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.

Pursuant to stipulation, the parties shall serve their evidence binders on each other by **July 15, 2015**. 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.

The parties shall meet and confer by 5:00 p.m. on **July 17, 2015**, to discuss exhibits and eliminate duplicate exhibits from the exhibit binders.

Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. Excerpts of an audio record of an individualized education program team meeting, if any, should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a certified court reporter.

The parties shall exchange resumes 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 and curriculum vitae not later than **July 17, 2015**.

District shall include as part of its exhibits the school calendar(s) for all of the years at issue. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), District shall serve a copy of the school calendar(s) and on Student **by July 17, 2015** and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ.

If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s). The parties shall serve a copy of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s) on the other party **by July 15, 2015** and include the documents in the binders provided for use by the witnesses and the ALJ.

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.

During the PHC, the parties were ordered to meet and confer by **5:00 p.m. on July 15, 2015**, and identify the witnesses who cannot be produced at hearing without a subpoena.

Pursuant to stipulation, the parties shall make all Education Code section 56505 witness disclosures by on **July 15, 2015**. No party shall be permitted to call any witnesses not timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties shall meet and confer **by July 17, 2015**, as to the schedule of witnesses and coordinate the availability and order 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.

On the first day of hearing before the first witness testifies, the parties shall provide the ALJ with one **joint** detailed hour-by-hour schedule of all witnesses expected to testify at hearing, which list shall also include an estimate of time for each party's direct and cross-examination.

Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness 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 each 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 such evidence. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. Telephonic Testimony. During the PHC, the parties were ordered to meet and confer to discuss the necessity of telephonic testimony and attempt to reach a stipulation. If the parties are not able to reach agreement, the matter shall be addressed by the ALJ on the first day of hearing. 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. Prior to the hearing, the proponent of the witness shall provide the proposed witness with a complete set of duplicate exhibit binders from all parties, containing all exhibits from each party, and instruct the witness not to remove any documents from the exhibit binders. Unless otherwise ordered, the witness shall testify on a land-line telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled unless otherwise ordered by the ALJ.

6. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present his case-in-chief, followed by District. If a witness is to be called by more than one party, each party shall ask questions of the witness so that the witness does not need to return for testimony.

7. Motions. 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 July 13, 2015.

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

The parties shall meet and confer **by July 17, 2015** to determine legal and factual stipulations, if any, to be submitted at hearing.

9. 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 during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting permitted while the hearing is in session.

The ALJ shall record the hearing and the ALJ's recording is the only official record of the hearing. No person shall record or photograph the proceedings unless otherwise permitted by the ALJ.

10. 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.

11. Special Needs and Accommodations. At present, neither party anticipates requiring any special needs or accommodations for this hearing.

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 the need is made known. Additional information concerning requests for reasonable accommodations is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

12. Hearing Closed to the Public. At the request of Parents, the hearing will be 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.

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.

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

IT IS SO ORDERED.

DATE: July 14, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings