

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2015060450

ORDER FOLLOWING PRE-HEARING
CONFERENCE AND GRANTING
JOINT REQUEST FOR
CONTINUANCE OF HEARING

On July 13, 2015 Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference. Attorney Carolyn Olsen appeared on Student's behalf. Attorney Meredith Reynolds appeared on behalf of Pasadena Unified School District (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 is continued based on the joint stipulation of the parties. The hearing shall take place on August 4, 2015 at 9:30 a.m., and August 5 and 6, 2015 at 9:00 a.m., unless otherwise ordered, at the District's administrative offices located at 2046 N. Allen Avenue, Altadena, California, 91001. District will ensure that parking is available to Student's parent, Student's attorney and the ALJ.

The school 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.

During the relevant time period, did District violate its obligations under the Individuals with Disabilities Education Act by failing to assess Student for eligibility for special education services and supports?

Student's proposed resolutions include an independent psychoeducational evaluation at public expense, and compensatory education based on the findings of the independent educational evaluation.

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. Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. The parties shall meet and confer before the close of business on August 3, 2015, to discuss exhibits and eliminate duplicate exhibits from the exhibit binders.

If the parties determine it is appropriate to do so, the parties may combine their exhibits into one notebook for the convenience of the witness. At the hearing, the parties shall supply an exhibit binder containing their respective exhibits for use by the ALJ, and a second exhibit binder for use by witnesses. The parties shall not serve exhibits on OAH prior to the hearing.

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 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 close of business on August 3, 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 a reasonable 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. 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. Timely Disclosure of Witnesses/Exhibits. The parties stipulated during the prehearing conference that District shall file and serve an amended prehearing conference statement including proposed witnesses and exhibits. District shall do so not later than the close of business on July 14, 2015. Unless the parties agree otherwise, the parties shall exchange exhibits pursuant to Education Code section 56505, subdivision (e)(7), which provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

8. Motions. At present neither party contemplates filing a prehearing motion. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of July 13, 2015.

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. No one shall engage in text messaging while the hearing is on the record, unless otherwise ordered by 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. Student's counsel advised that, if Student testifies, she may need a break after forty-five minutes, and will need documents in large print if she is asked to read any document. Student's counsel advised the ALJ that those potential accommodations do not require any accommodations to be provided by OAH, and they shall be coordinated by the parties before the first day of hearing, if needed.

At present neither party anticipates the need for any other special accommodation for any witness or party, or for translation services. 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. Hearing Open To the Public. At the request of the parent, the hearing will be open to the public. Student shall notify District before the first day of hearing of the estimated number of observers expected so District can ensure that the designated hearing room can accommodate a reasonable number of observers.

14. Audio Taping. Student's request to audiotape the hearing is granted subject to the following conditions which are 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. The recording is not the official record and is permitted as a courtesy, unless otherwise ordered by the hearing ALJ.

15. 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.

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

IT IS SO ORDERED.

DATE: July 13, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings