

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. 2015061019

ORDER FOLLOWING PREHEARING  
CONFERENCE

On July 20, 2015, a telephonic prehearing conference was held before Administrative Law Judge Alexa J. Hohensee, Office of Administrative Hearings. Alexis Casillas, Attorney at Law, appeared on behalf of Student. Mary Kellogg, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

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

1. Disclosure. At the beginning of the prehearing conference, ALJ Hohensee disclosed that she worked for two years in approximately 2002 and 2003 for a special education firm, Lozano Smith, at the same time that District's counsel Mary Kellogg worked at that firm as a law clerk and attorney. ALJ Hohensee represents that she is free from bias, prejudice or interest in this due process proceeding and would be free and impartial in the conduct of, and rendering a decision in, this proceeding. However, ALJ Hohensee gave Student until 12:00 p.m. (noon) on Tuesday, July 21, 2015, to file a challenge to ALJ Hohensee for cause. If such a challenge is filed, OAH will set a hearing for the purpose of determining Student's cause challenge to be held on or before Monday, July 28, 2015.

2. Hearing Dates, Times, and Location. The hearing shall take place on July 29-30 and August 3-5, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m., and August 3, 2015, on which day the hearing will begin at 1:30 p.m., unless otherwise ordered.

Student's motion to change the location of the hearing to downtown Los Angeles is granted for good cause. The hearing shall take place at the offices of OAH located in the Serra Building at 320 West Fourth Street, Suite 630, Los Angeles, California 90013. OAH offices 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.

3. Issues and Proposed Resolutions. The issues at hearing are as follows:

(1) Did District fail to meet its “child find” obligation with regard to Student prior to May 2013?

(2) Did District deny Student a free appropriate public education from the 2011-2012 school year through the 2014-2015 school year by:

- (a) Failing to consider information provided by and the concerns of the parents;
- (b) Failing to consider information provided by independent professionals;
- (c) Engaging in a pattern of conduct so as to delay Student’s receipt of a FAPE; and
- (d) Failing to offer Student a FAPE in the least restrictive environment, including residential placement, educationally related mental health services and remedial instruction?

(3) Did the IEP of March 6, 2015 fail to offer Student a FAPE in the least restrictive environment?

As a remedies, Student seeks reimbursement for private placement and related costs, reimbursement for assessments and compensatory education.

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 of a party’s exhibits shall be Bates-stamped. 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 by **5:00 p.m. on July 22, 2015**, 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.

The parties shall meet and confer by **5:00 p.m. on Monday, July 27, 2015**, to eliminate duplicate exhibits from the exhibit binders. Duplicate exhibits and tabs should be removed from all binders prior to the first day of hearing. Exhibits do not need to be re-numbered after duplicates are removed. The parties are encouraged, if the total number of documents is not too large, to place the exhibits for both parties into one binder. **Each exhibit shall consist of one document; separate documents may not be combined into one exhibit.**

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.

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), Charter Schools shall serve a copy of the school calendar(s) on Student by **July 27, 2015**, and include the school calendar(s) 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. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

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. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

The parties are ordered to meet and confer by **5:00 p.m. on Wednesday, July 22, 2015**, as to the schedule of witnesses. The parties shall coordinate the availability and order of testimony 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.

The parties shall prepare a joint witness schedule prior to the first day of hearing, identifying 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, with an estimate of the duration of each witness's direct, cross, re-direct and re-cross testimony. The ALJ will finalize the

witness schedule on the first day of hearing, and will revisit the schedule at the beginning and end of each hearing day. Counsel shall meet and confer each day of hearing to revise the witness schedule as needed.

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. Education Code, section 56505.1, subd. (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

6. Scope of 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.

7. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence. The order in which the parties present their cases in chief shall be such that each witness need appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

8. 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 physical 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. Electronic copies of the evidence binders will not be permitted. The witness must be on a clear telephone connection, and in a location that ensures the confidentiality of the proceedings. No witness will be heard by telephone unless all these requirements have been fulfilled.

9. Electronic Recording of Hearing. Student's request for permission to make an audio recording of the hearing is granted. Any party who desires to make such a recording shall do so only on the conditions that: (1) the parties shall turn on and off the recording device at the same time that the ALJ is on and off the record, in order to avoid recording conversations while off the record; (2) the parties shall not play any part of the recording for a prospective witness; (3) the parties shall not publish or play any part of the recording for any purpose other than assisting in the representation and presentation of this due process hearing; (4) the parties will erase, or otherwise destroy, the recording after the hearing and all opportunities for appeal from any decision herein has been exhausted; and (5)

the parties shall not use this recording in any subsequent due process hearing. The recording is not the official record and is permitted as a courtesy. The operation of the party's recording mechanism will not be allowed to delay the hearing

10. Motions. Student moved to be provided with (i) a private room for use of Student and her counsel, (ii) a telephone for use by Student and her counsel, (iii) access to a photocopier and fax machine during hearing, (iv) access to secure wireless internet, and (v) two power strips in the hearing room. Student cited no authority directing OAH to provide these resources to litigants, and Student's counsel can take other reasonable steps to protect the client/attorney privilege and present Student's case, including without limitation, stepping into the hall during breaks to speak with Student's representatives, making photocopies at counsel's office at the end of each day, and procuring resources such as power cords, laptop batteries, and a cell phone for calls and internet access. Accordingly, Student's motion for to be provided with these resources by OAH is denied.

Student indicated that she may file an amended complaint. An amended complaint may be filed when either (a) the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or (b) the hearing officer grants permission, provided the hearing officer may grant such permission at any time more than five (5) days prior to the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

Any 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 this PHC.

11. 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.

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. Special Needs and Accommodations. A Spanish language interpreter is required.

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>.

15. Hearing Closed To the Public. The hearing will be closed to the public.

16. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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 vacated without this information.

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

IT IS SO ORDERED.

DATE: July 21, 2015

/s/  
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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings