

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014120948

ORDER FOLLOWING PREHEARING
CONFERENCE OF JULY 27, 2015

On July 27, 2015, a telephonic prehearing conference was held before Administrative Law Judge Robert Helfand, Office of Administrative Hearings. Deanna D. Sweeney, Attorney at Law, appeared on behalf of Parent on behalf of Student. Debra Ferdman, Attorney at Law, appeared on behalf of Long Beach 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 August 4 -6 and 11, 2015 at the District's offices located at 2221 Argonne Avenue, Tucker Bungalow 24, Long Beach, CA 90815. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered.

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.

District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum 1) a table for Student and his representatives; 2) a table for District's legal representative and special education representative; 3) a table for the witness; and 4) a table for the ALJ, near an electrical outlet. District shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. District shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

a) From November 6, 2013 to the commencement of the 2014-2015 school year, District denied Student a free appropriate public education as it:

- (1) Failed to offer appropriate placement in the least restrictive environment;
- (2) Failed to provide to Student appropriate services and interventions, relating to Student's behavior issues, so as to provide him with educational benefit;
- (3) Failed to develop appropriate goals and objectives;
- (4) Failed to assess Student in all areas of suspected disabilities;
- (5) Failed to timely complete a functional behavior analysis evaluation?

b) For the 2014-2015 school year and at the March 24, 2015 Individualized Education Program team meeting, District denied Student a FAPE as it:

- (1) Failed to offer appropriate placement in the least restrictive environment;
- (2) Failed to provide Student appropriate services and interventions, relating to Student's behavior issues, so as to provide him with educational benefit;
- (3) Predetermined Student's IEP;
- (4) Failed to conduct an assessment of Student pursuant to the signed January 22, 2015 Assessment Plan;
- (5) Failed to implement the January 27, 2015 Behavior Support Plan; and
- (6) Failed to offer Student services during the 2015 Extended School Year?

Student requests the following proposed remedies that District: (a) provide Student with social-emotional interventions and services; (b) provide Student with a comprehensive Independent Educational Evaluation at District expense; (c) provide Student with Extended School Year services; (d) provide 84 hours of compensatory recreational therapy services; (e) remove any references to any inappropriate suspensions from Student's educational records; and (f) 42 hours of compensatory counseling services.

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 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 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 ordered to meet and confer by July 29, 2015, as to the schedule of witnesses. The parties have agreed 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 following witnesses will be called to testify by Student: Parents, Dr. Deborah Neal, Dr. Sira Salahieh, Booker T. Robinson, Lindsay Roberts, and Student. Because of Student's young age, student's counsel shall make an offer of proof as to his testimony.

The following witnesses will be called to testify by District: Parents, Leticia Cornejo, Kimberly Weber, Linda Bell, Stephen Johnson, Julie Gomez, Kelly Lingel, Dr. Christopher Gutierrez-Lohrman, Amanda Smith, Hugo Figueroa, Yadina Ortega, Michael Anderson, and Robin Samana.

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.

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. No pretrial motions are pending or contemplated.

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

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 or set to vibrate during the hearing unless permission to the contrary is obtained from 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 the need for 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 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 Open To the Public. Student requests that the hearing be open 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: July 24, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings