

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015050506

ORDER FOLLOWING PREHEARING
CONFERENCE

On September 11, 2015, a telephonic prehearing conference was held before Administrative Law Judge Robert G. Martin, Office of Administrative Hearings. Valerie Vanaman, Esq. appeared on behalf of Student. Student's mother, and intern Brian Godfrey were present with Student's counsel. Melissa Hatch, Esq. appeared on behalf of Glendale Unified School District. The prehearing conference was recorded.

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

1. Hearing Dates, Times, and Location. The hearing will take place on September 22, 23, 24 and 28, 2015, and continue thereafter day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 9:00 a.m., except the first day will commence at 9:30 a.m. The hearing shall take place at Glendale Unified School District, 223 North Jackson Street, Room 206B, Glendale, California 91206.

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. District shall ensure that parking is available for Student's Parent, Student's attorney and the ALJ.

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 at the due process hearing are:

- 1) Did District deny Student a free appropriate public education during the period from June 2014 to the filing of the complaint by failing to appropriately assess Student's assess strengths, preferences, interests, and independent living skills to develop a transition plan for Student?
- 2) Did District's September 3, 2014 individualized education program deny Student a FAPE by:
 - a. Failing to accurately determine and document Student's present levels of performance;
 - b. Failing to include appropriate, measurable goals for Student in the areas of:
 - i. academics;
 - ii. speech and language;
 - iii. reading;
 - iv. math;
 - v. social skills; and
 - vi. transition
 - c. Failing to provide Student an appropriate transition program;
 - d. Failing to provide Student any academic instruction; and
 - e. Failing to provide Student appropriate speech and language services?
- 3) Did District deny Student a FAPE during the period from June 2014 to the filing of the complaint by failing to implement Student's IEP by placing Student in an unsupervised and unsafe program?
- 4) Did District deny Student a free appropriate public education during the period from April 20, 2015 to the filing of the complaint by refusing to provide Student any special education placement or services after being advised on April 20, 2015 that Student could not safely return to District's proposed placement?

As resolutions, Student seeks independent educational evaluations for Student in the areas of transition, academics, and speech and language; an order directing District to provide Student a program that includes supervised work experience, community based training, academic instruction, speech and language services with PROMPT instruction, and

individualized on-to-one reading instruction; an order that district provide all of Student's programming through private providers; and an order that District provide Student compensatory services and reimbursement of costs according to proof at hearing.

3. Exhibits. Student identified 27 exhibits that Student intends to present at hearing. District identified 18 Exhibits that it intends to present at hearing. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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. Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment are expected to be subjects of direct examination.

4. Witnesses. Student identified 17 percipient witnesses, including four expert witnesses who Student intended to present at hearing. District identified 17 percipient witnesses, and no expert witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. The District will also inform Student of the identity of, and available contact information for, any witness identified by Student as an employee of the District who has left the District's employ, by 5:00 p.m. on Wednesday, September 16, 2015. The parties will 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.

5. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties are to exchange final witness lists and exhibit binders by 5:00 p.m. on Tuesday, September 15, 2015 at 5:00 p.m. Witnesses and documents not disclosed by that time may be excluded at the request of the other party from introduction at the hearing. Each party reserves the right to present additional witness and documents for purposes of rebuttal.

6. Order of Presentation of Evidence. In these consolidated matters, Student shall present his case first followed by District. If a witness is to be called by both parties, each counsel shall be prepared to conduct all direct and cross examination of the witness.

Witnesses will not be recalled, unless it is to rebut testimony offered by other witnesses who appeared after the witness in question.

7. Telephonic Testimony. Student requests that witness Sarah Rosenfeld be permitted to testify telephonically. District requested that witness Jack Kevork be permitted to testify telephonically. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Student is granted leave to offer telephonic testimony from Sarah Rosenfeld, and District is granted leave to offer telephonic testimony from Jack Kevork. Each party shall provide its 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.

8. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer on or before Friday, September 18, 2015 at 2:00 p.m. regarding the schedule of witnesses for the hearing. The parties are to 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 discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

On the first day of hearing, before the first witness testifies, the parties shall provide the ALJ with one detailed hour-by-hour schedule of all witnesses expected to testify at the hearing, which list shall also include an estimate of time for each party's direct and cross-examination. 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 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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.

10. Motions. The parties do not anticipate bringing any further motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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 PHC.

11. Special Needs and Accommodations. Mother for health reasons shall be permitted to stand, as needed, to be comfortable during the 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, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

12. 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.

13. Audio Recording. Student's motion to record the proceeding is granted. The following conditions apply to any recording: (i) OAH's recording is the only official recording; (ii) the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and (iii) the operation of the party's recording mechanism will not be allowed to delay the hearing. Both parties may record the proceedings.

14. 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.

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

16. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. 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.

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

IT IS SO ORDERED.

DATE: September 14, 2015

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings