

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015090102

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 2, 2015, a telephonic prehearing conference was held before Administrative Law Judge Marian H. Tully Office of Administrative Hearings. Parent represented Student. Parent participated in the conference call from District's offices with the assistance of Maureen Cottrell, District Director of Special Education Resolution Support. Attorney Daniel Harbottle appeared on behalf of Newport Mesa Unified School District (District). The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Prehearing Conference and Due Process Hearing Dates and Times. Parent requested a continuance. Parent explained the reasons for her request. District agreed that Parent's reasons showed good cause to continue the prehearing conference and the due process hearing. The parties agreed on the following dates:

Telephonic Prehearing Conference: Friday, November 6, 2015, at 10:00 a.m.

**Due Process Hearing: Tuesday, November 17, 2015, at 9:30 a.m., and
Wednesday, November 18, 2015, at 9:30 a.m.**

The hearing may continue day to day, Monday through Thursday, at the discretion of the Administrative Law Judge.

2. Location. The hearing shall take place at the following location:

**2985-A Bear Street
Costa Mesa, California, 92626**

District represents that the facility for the hearing fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. District is in the process of completing its certification that the facilities used for this case comply with the law. The local educational agency shall inform OAH within two business days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, 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.

3. Issues and Proposed Resolutions. Based on Student's complaint, Student's prehearing conference statement, and the discussion during the prehearing conference, the issues and the proposed resolutions are:

- a. Did District deny Student a free appropriate public education by failing to provide a one to one aide for Student?
- b. Did District impede Parent's right to participate in the decision making process for Student's education by restricting email communication from Parent?
- c. Did District impede Parent's right to participate in the decision making process for Student's education by disrespecting a court order giving Parent joint legal custody of Student?
- d. Did District discriminate against Parent and Student by treating Parent and Student disrespectfully due to their disability?
- e. Did District discriminate against Parent on the basis of her disability and violate her civil rights by failing to appropriately and respectfully respond to her complaints to the school board?

Student seeks an order requiring District to do the following: provide a one to one aide for Student; "unblock" Parent's emails; treat, and communicate with, Parent respectfully; and allow her participation in decisions concerning Student consistent with the family law court's custody determination.

4. Prehearing Conference Statements, Witness Lists and Exhibit Lists. District timely filed its Prehearing Conference Statement, Witness List and Exhibit List. Student filed a Prehearing Conference Statement and a Witness List. Student shall file an Exhibit List with OAH and send District a copy of the Exhibit List. The Exhibit List shall list Student's exhibits and identify each document, the author and the date of the document.

Student's Exhibit List must be filed no later than 5 p.m. on Wednesday November 4, 2015.

5. Exhibits. Education Code section 56505, subdivision (e)(7) requires the parties to exchange copies of their exhibits 5 business days before the hearing. OAH requires exhibits to be placed in three ring binders before the hearing.

The parties shall exchange copies of their exhibits no later than 5 p.m. on Monday, November 9, 2015.

Instructions for preparing exhibit binders. 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-1" is the first exhibit in Student's binder, "S-2" is the second exhibit in Student's binder, etc., and "D-1" is the first exhibit in district's binder, etc.). Each exhibit shall have page numbers, or all of a party's exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall bring two additional binders containing its exhibits. One binder will be used by the ALJ, and the second exhibit binder will be used by witnesses. The parties may not serve exhibits on OAH prior to the hearing.

6. Motions. All prehearing motions will be addressed during the prehearing conference on November 6, 2015.

All prehearing motions must be filed no later than 5 p.m., Friday October 30, 2015.

Any written response must be filed no later than 5 p.m., Wednesday, November 4, 2015.

7. All other prehearing conference matters will be addressed at the prehearing conference on November 6, 2015.

8. 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.

IT IS SO ORDERED.

DATE: October 02, 2015

/s/
MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings