

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT, ABC UNIFIED SCHOOL  
DISTRICT, AND CALIFORNIA  
DEPARTMENT OF EDUCATION.

OAH Case No. 2015020992

ORDER FOLLOWING PREHEARING  
CONFERENCE

On October 5, 2015, a telephonic prehearing conference was held before Administrative Law Judge Kara Hatfield, Office of Administrative Hearings. Keith Davis, Attorney at Law, appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of Los Angeles Unified School District. Carlos Gonzalez, Attorney at Law, appeared on behalf of ABC Unified School District. Len Garfinkel, Attorney at Law, appeared on behalf of California Department of Education. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on October 13, 14, 15, and 19, 2015, 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. The hearing shall take place at the Office of Administrative Hearings, 15350 Sherman Way, Suite 300, Van Nuys, CA 91406.

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, and the proposed resolutions, are listed below.<sup>1</sup>

- a) Whether Los Angeles Unified denied Student a free appropriate public education by failing to assess Student in all areas of suspected disability, specifically behavior and mental health;<sup>2</sup>
- b) Whether Los Angeles Unified and ABC Unified denied Student a FAPE in the April 19, 2013 and April 4, 2014 Individualized Education Programs by:
  - i) failing to develop appropriate goals and objectives, specifically in the areas of reading, writing, math, language, and behavior;<sup>3</sup>
  - ii) failing to offer Student an appropriate placement, specifically a residential treatment center; and
  - iii) failing to offer Student appropriate related services, specifically speech/language therapy and behavior supports and services;
- c) Whether Los Angeles Unified and ABC Unified denied Student a FAPE in the January 9, 2015 and March 24, 2015 IEP's by failing to offer Student an appropriate placement, specifically a residential treatment center; and
- d) Whether Department of Education became responsible for providing Student a FAPE since January 9, 2015, because Los Angeles Unified and ABC Unified both denied responsibility for and are unwilling or unable to offer Student a FAPE, or the Legislature or Department of Education has made it impossible to identify a responsible local educational agency; and denied Student a FAPE since January 9, 2015, by failing to offer Student placement in a residential treatment center.

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<sup>1</sup> The time frame(s) at issue in the case might be refined upon ruling on Los Angeles Unified's Motion to be Dismissed as to Certain Time Periods, which was filed approximately one hour before the PHC.

<sup>2</sup> At the PHC, Student withdrew his allegation regarding a neuropsychological evaluation and confirmed the areas of suspected disability in which Los Angeles Unified should have assessed Student were only behavior and mental health.

<sup>3</sup> Although Student's amended complaint did not specify areas in which Los Angeles Unified and ABC Unified failed to develop appropriate goals and objectives, Student identified these five specific areas during the PHC.

Student's proposed resolutions are for any of the respondents to offer and fund placement for Student in an appropriate out-of-state residential treatment center; for any of the respondents to prospectively provide one hour per week of individual counseling and one hour per week of individual and small group speech and language services; and for Los Angeles Unified and/or ABC Unified to provide compensatory education services including intensive academic instruction, speech/language therapy, and counseling through non-public agencies.

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," "L," "A" or "E" in front of the exhibit to designate if it is a Student, Los Angeles Unified, ABC Unified, or Department of Education exhibit (for example, "S-5, S-6," or "L-1, L-2," etc.). 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 shall serve 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.

The parties are ordered to meet and confer by October 9, 2015, to delete duplicate exhibits from the exhibit binders.

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.

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. No 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 October 9, 2015, as to the schedule of witnesses. The parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each party's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and all parties shall examine the witness when the witness is first called. Los Angeles Unified and ABC Unified 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 each 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. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

6. Telephonic Testimony. No party requested 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 each 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. Unless otherwise ordered, the witness shall testify from a private room using a landline telephone. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party. Accordingly, Student shall present its case-in-chief, followed by ABC Unified, Los Angeles Unified, and Department of Education.

9. Motions. Approximately one hour before the PHC, Los Angeles Unified filed a Motion to be Dismissed as to Certain Time Periods. At the PHC, Student stated opposition to the motion and requested the opportunity to submit a written opposition on the normal timetable OAH affords parties to respond to motions. Los Angeles Unified's motion is not ripe for ruling; it will be ruled upon after all parties' opportunity to respond in writing has passed.

No other pretrial motions are pending or contemplated. Any motion filed after this date 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 prehearing conference of October 5, 2015.

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

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. Special Needs and Accommodations. A Spanish language interpreter will be provided by OAH. At this time, no party anticipates the need for special accommodation for any witness or party.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at: <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>

14. Hearing Closed To the Public.

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.

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.

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

IT IS SO ORDERED.

DATE: October 5, 2015

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/s/  
KARA HATFIELD  
Administrative Law Judge  
Office of Administrative Hearings