

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. 2015050819

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 16, 2015, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Parents appeared on behalf of themselves and Student (collectively, Student). Donald Erwin, Assistant General Counsel, appeared on behalf of the Los Angeles Unified School District. 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 27 through October 29, 2015, and continue day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406. Unless otherwise ordered, the hearing shall begin at 9:30 a.m. on October 27, 2015, and at 9:00 a.m. on all other days.

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 was 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:

Whether District deprived Student of a free appropriate public education from the time he became three years old through and including the present, by failing to provide auditory-verbal therapy services.¹

¹ Student’s Complaint also alleges that District deprived Student of a free appropriate public education regarding auditory-verbal therapy services for the period from birth to age three. This claim, which arises out of Student’s receipt of Early Start services, is based upon

As a remedy, Student seeks reimbursement of amounts paid to date for auditory-verbal therapy services he has received from a nonpublic agency provider.

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 whether 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 consecutively numbered by Bates stamp or similar method, commencing with the first page of the first exhibit and ending with the last page of the last exhibit. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other by not later than 5:00 p.m. on October 20, 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.

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 except for good cause shown, and unless the ALJ rules that it is otherwise admissible.

4. Witnesses. The parties shall serve their final witness lists upon each other and file them with OAH by not later than 5:00 p.m. on October 20, 2015, in compliance with Education Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available, upon timely notice. Neither party shall be permitted to call any witnesses not disclosed in the party’s final witness list except for good cause shown, and at the discretion of the ALJ.

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. The ALJ has discretion to limit the number of witnesses who testify and to set the length of time allowed for testimony. The parties are encouraged to review and curtail 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.

Except for parties, and individuals who are serving as representatives of parties for purposes of appearance at hearing, no witnesses will be allowed in the hearing room during the proceedings except when that witness has been called to testify.

Part C of the Individuals with Disabilities Education Act. (20 U.S.C. § 1431 et seq.) The Special Education Division of OAH, where Student filed his Complaint, has no jurisdiction over claims arising out of Part C or Early Start services. Accordingly, this claim is dismissed without prejudice. Additionally, at the PHC, Student dismissed without prejudice all other claims alleged in his Complaint.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. District shall have witnesses available in case agreement on a witness list is not reached. At all times throughout the hearing, the parties shall be prepared to discuss the witness schedule and the time the testimony of each witness is expected to take.

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, at the discretion of the ALJ. 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. 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. The proponent of the witness shall provide the witness with a complete set of exhibit binders from all parties, containing all of each party's exhibits, prior to the time that the witness testifies, 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 questions, objections, and rulings. The witness shall testify from a landline telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. 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 first. It is preferred that the testimony of Parents shall be presented as early as possible during the presentation of Student's case-in-chief.

8. 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.

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

10. 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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing, unless the

ALJ grants permission. There shall be no weapons in the hearing room, except as may be carried by law enforcement personnel.

11. Special Needs and Accommodations. No party has requested any special accommodation or interpreter services. A party, or a participant in this case, such as a witness, who requires reasonable accommodations to participate in the mediation or 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>

12. Hearing Closed To the Public. The hearing shall be closed 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 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 or with Education Code section 56505,

subdivision (e) (7), may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: October 19, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings