

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015090527

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 19, 2015, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Mark Woodsmall, Attorney at Law, appeared on behalf of Parents and Student (collectively, Student). Geoffrey Winterowd, Attorney at Law, appeared on behalf of District. The PHC was recorded.

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

1. Continued PHC Date, Hearing Dates, Times, and Location. Pursuant to the order dated October 21, 2015 granting the parties' joint request for continuance, a PHC shall take place on January 8, 2016, at 3:00 p.m. The hearing shall take place on January 19-21, 2016, and shall continue day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the hearing will begin at 1:30 p.m. on January 19, and at 9:00 a.m. on all other hearing days. The hearing shall take place at the District's offices located at 2335 Plaza Del Amo, Torrance, California 90509.

As ordered in the scheduling order, District was to 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 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 failed to certify that it would provide a facility for this case that complied with the law. District shall inform OAH within two business days of the date of this Order it is able to certify that it will provide a facility that complies with the law.

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 representatives; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall make reasonable efforts to provide drinking water 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.

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 dates or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues to be heard at the due process hearing, and the proposed resolutions, are listed below.

District failed to offer or provide Student a free appropriate public education on the following grounds:

A. Failing to conduct an occupational therapy assessment ~~prior to before~~ discontinuing individual occupational therapy services at the February 4, 2014 IEP team meeting;

B. Failing to conduct a functional behavior assessment ~~prior to before~~ -reducing behavioral services at the February 4, 2014 and January 29, 2015, IEP team meetings;

C. Failing to conduct an assistive technology assessment from September 4, 2013, through the ~~present~~;

Commented [SK1]: It should only be through the date of the due process filing.

D. Predetermining eligibility, placement, and services by:

(1) Failing to offer individual occupational therapy in the February 4, 2014, IEP team meeting and thereafter; and

(2) Failing to remove Student’s secondary eligibility of intellectual disability in all IEP’s since September 4, 2013, thereby impeding Parents’ right to participate in the IEP process; and

(3) Failing to offer Student a placement in the least restrictive environment in the June 11, 2015 IEP;

E. Failing to provide prior written notice from February 2014 and thereafter regarding:

(1) Eliminating Student’s individual occupational therapy services in the February 4, 2014 ~~IEP~~;

(2) -Refusing to remove Student's secondary eligibility of intellectual disability; and

(3) Offering to place Student in a special day class for a full day;

F. Failing to provide the following from September 4, 2013, and during the 2013-2014, 2014-2015, and 2015-2016 school years:

(1) Appropriate occupational therapy services;

(2) Appropriate speech and language services;

(3) Appropriate behavior services; and

(4) Assistive technology/augmentative and alternative communication services;

G. Failing to offer individual occupational therapy services from February 4, 2014;

H. Failing to implement Student's June 7, 2013 IEP since September 4, 2013; her February 4, 2014 IEP; and her January 29, 2015 IEP with respect to group speech and language services;

I. Failing to implement Student's February 4, 2014, IEP consistently with respect to consultation behavior intervention services;

J. Failing to offer placement in the least restrictive environment in the June 11, 2015 IEP, by placing Student in a special day class throughout her full day, and by offering adapted physical education in a pull-out model; and

K. Failing to make a clear offer of a ~~free appropriate public education~~ FAPE since September 4, 2013.

Student's proposed resolutions include compensatory education, reimbursement, one-to-one applied behavior analysis services, individual speech and language services through a nonpublic agency, individual occupational therapy services through a nonpublic agency, social skills training, assistive technology/augmentative and alternative communication services, adapted physical education consultation services, and independent educational evaluations in the areas of speech and language, occupational therapy, behavior, and assistive technology.

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, beginning 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 and file their final exhibit lists, and 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. In the event of duplicate exhibits, the most legible version will be used.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party’s final exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is otherwise admissible.

4. Witnesses. The parties shall serve their final witness lists upon each other in compliance with Evidence 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 to the other party without subpoena, upon timely request. 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 final witness list, except for good cause shown, and at the discretion of the ALJ.

The parties are encouraged to review and curtail their witness lists prior to the hearing. Witness testimony 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.

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. The parties shall be prepared during each day of hearing to discuss the witnesses to be presented that day and the next hearing day, and the time the testimony of each such 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 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 questions, objections and rulings. The witness shall testify by means of 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 law 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.

8. Motions. District may file a request to move the hearing to another location nearby the District office. No other pretrial motions are pending or contemplated at this time.

9. 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.

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

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

12. Special Needs and Accommodations. No party has requested any accommodation or language interpreter. A party or participant to this case, such as a witness, requiring reasonable accommodation 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>

13. Hearing Closed To the Public. The hearing is closed to the public.

14. 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 inform OAH of the settlement in writing and 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.

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.

15. Failure to comply with this order and with Evidence Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: October 21, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings