

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015030082

ORDER FOLLOWING OCTOBER 23,
2015 PREHEARING CONFERENCE

Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings held a telephonic prehearing conference on October 23, 2015. Attorney Geoffrey Winterowd appeared on District's behalf. Student's mother appeared on Student's behalf. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following orders.

1. Hearing Dates, Times, and Location. The hearing shall take place on November 3, 2015 at 9:30a.m. and November 4, 2015 at 9:00 a.m., and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 2335 Plaza Del Amo, Torrance, California 90509. District shall notify OAH as soon as possible if the location of the hearing changes.

The named local educational agency 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The local educational agency shall inform OAH within two 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 assist the ALJ to ensure that the hearing room is configured into a courtroom setting, including (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 also make reasonable effort to ensure that drinking water and tissue are available to all parties, witnesses 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, and the proposed resolutions, are listed below.

1) Was District's October 6, 2014 speech and language assessment appropriate such that Student is not entitled to an independent educational evaluation at public expense?

2) Was District's determination that Student was no longer an individual with exceptional needs appropriate, and, if so, may District exit Student from special education without parental consent?

District's proposed resolutions are as stated in the issues.

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 if 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 Bates-stamped. Each exhibit shall consist of one document; separate documents may not be combined into one exhibit. Each exhibit binder shall contain a detailed table of contents. 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 shall not serve exhibits on OAH prior to the hearing. The parties shall meet and confer before the hearing in an attempt to consolidate exhibits and avoid duplicates.

The parties shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties shall not serve exhibits on OAH prior to the hearing. Both parties shall exchange exhibits at least five business days before the first day of hearing. (Ed. Code, § 56505, subd. (e)(7).) The parties agree that Parent may hand deliver Student's exhibits to District's Special Education office before close of business on the fifth day before the hearing, which shall be deemed compliance with this requirement.

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.

If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s). The parties shall include the documents in the binders provided for use by the witnesses and the ALJ.

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.

The parties are ordered to meet and confer at 9:00 .m. October 30, 2015, or as otherwise agreed upon, as to the schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. The District 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 of each such 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.

Prior to the commencement of the due process hearing, 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

Except solely for rebuttal or impeachment purposes, neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement or to the other party at least five business days prior to the hearing except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. (Ed. Code, § 56505, subd. (e)(7).)

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. 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 the 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; shall arrange for the testimony to be taken in a private location with no other persons present; 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.

Student has identified Student's father as a witness. Father may not be able to personally attend the hearing and may require telephonic testimony, which District did not object to. Parent shall notify District as to whether Father requires telephonic testimony by Friday, October 30, 2015 in order for District to make the necessary arrangements.

7. Electronic Recording of Hearing.

a. Audio Recording. Neither party intends to audio record the hearing.

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, District is the petitioning party. Accordingly, District shall present its case-in-chief, followed by Student, in accordance with the provisions of Paragraph 4 as to the schedule of witnesses.

9. Motions. No 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 23, 2015.

10. Stipulations. OAH encourages the parties to reach agreement as to pertinent facts, contentions or resolutions. Any proposed stipulation shall be submitted to the assigned ALJ in written form and signed by both parties.

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 set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

12. Special Needs and Accommodations. Parent indicated that she has not yet determined whether she will need the assistance of a Spanish language interpreter. Parent

shall notify OAH no later than Tuesday, October 27, 2015, if a Spanish language interpreter is required for the hearing.

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 will be closed to the public. Mother will represent Student at hearing. The parties agree that, if Father is not able to attend the hearing, Mother may bring one adult to assist her during the hearing, providing that, if Student timely identifies that adult to District as a witness, he or she shall testify first. The parties further agree that District's Special Education Director, who has been identified as a witness, may attend all days of hearing as a representative of District, and may testify at the end of the hearing, if needed.

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 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.

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

IT IS SO ORDERED.

DATE: October 23, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings