

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. 2015100068

ORDER FOLLOWING PREHEARING  
CONFERENCE AND CONTINUING  
DUE PROCESS HEARING

On Monday, November 16, 2015, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Max Goldman, Attorney at Law, and Christina Salimon, Attorney at Law, appeared on behalf of Student. Mary Kellogg, Attorney at Law, appeared on behalf of Los Angeles Unified School District. The prehearing conference was recorded.

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

1. Hearing Dates, Times, and Location. The hearing is continued on joint motion of the parties and shall take place on November 30, 2015, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the OAH offices located at 15350 Sherman Way, Suite 300, Van Nuys, CA, 90731. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

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.

Issues:

1) Whether District denied Student a free appropriate public education by failing to adequately assess him in all areas of known or suspected disability, including academics, health, and social/emotional.

2) Whether District denied Student a free appropriate public education in the IEP of May 27, 2015 by failing:

- a) To accurately state Student's present levels of performance;
- b) To craft appropriate and measurable annual goals for the 2015-2016 school year;

3) Whether District denied Student a free appropriate public education for the 2015-2016 school year by failing to:

- a) Offer Student an educational placement in a non-public school or residential treatment center;
- b) Provide Student with counseling services, including drug and alcohol counseling; and psychological counseling for ADHD, anxiety, and depressive disorders;
- c) Provide Student a behavior support plan;
- d) Provide Student with curriculum accommodations and modifications to allow Student to access a California state standards-based education;
- e) Provide Student with research-based intervention strategies;

4) Whether District committed a procedural violation of the IDEA that denied Student a free appropriate public education by:

- a) Failing to have an IEP in effect at the beginning of the 2015-2016 school year;
- b) Failing to timely convene Student's annual IEP meeting for the 2015 – 2016 school year;
- c) Impeding Parents' right to participate in the IEP process during the May 27, 2015 IEP meeting and the later reconvening of that meeting;

Student's Proposed Resolutions:

1) District shall place Student in an appropriate placement in a small, highly structured educational environment with a low student to teacher ratio and an individualized curriculum;

- 2) District shall reimburse Parents for expenses incurred in their private placement of Student at Newport Academy;
- 3) District shall reimburse Parents for expenses incurred in their private placement of Student at Newport Academy Day School and IPO;
- 4) District shall provide Student with individual, clinic-based counseling services, including drug and alcohol counseling, by a licensed psychologist qualified to work with children with ADHD, anxiety, and depressive disorders;
- 5) District shall fund independent educational evaluations in academics, health, and social –emotional;
- 6) District shall provide Student with curriculum accommodations and modifications calculated to allow Student to access a California state standards-based education;
- 7) District shall conduct an IEP meeting with all necessary team members to develop an appropriate IEP for Student and shall pay for attorney’s fees incident to the IEP meeting;
- 8) District shall provide compensatory education according to proof at hearing;
- 9) District shall pay Student’s allowable costs of suit and attorney’s fees;
- 10) Such other and further relief as the Court deems just and proper.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall use capital letters to identify exhibits, and District shall use numbers to identify exhibits. 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. 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 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. Neither 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 the close of business on Wednesday, November 25, 2015, as to the schedule of witnesses, to coordinate the availability and order of testimony of witnesses, to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled.

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.

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; 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's motion to allow Ryan Fedoroff to testify telephonically is granted. Student shall provide the witness with a complete exhibit binder from each party, 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 shall arrange for the testimony to be taken in a private location with no other persons present.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing.

District may also make an audio recording of the hearing at its discretion, subject to the conditions related above.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings.

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 District, except to the extent that considerations related to the scope of witness examinations control, as explained in paragraph 5, above.

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 November 16, 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. No special needs or accommodations for any participant in the hearing are contemplated by either party, other than in the instance that Student is called to testify, in which event the party calling Student as a witness shall provide notice to the other party and the ALJ one day prior to Student's testimony of needed accommodations.

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>

14. Hearing Closed To the Public. At the request of Student, the hearing will be 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: November 17, 2015

/s/

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TED MANN  
Administrative Law Judge  
Office of Administrative Hearings