BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2014120059
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT.	OAH Case No. 2014120530 ORDER FOLLOWING TRIAL SETTING CONFERENCE AFTER REMAND

On October 31, 2016, the undersigned Administrative Law Judge convened a telephonic trial setting conference to discuss the Memorandum and Order issued by the District Court on September 12, 2016, remanding this case to the ALJ. At the trial setting conference, the ALJ scheduled a prehearing conference and hearing, and then, on November 15, 2016, issued an Order stating that the issues at hearing were whether Student is entitled to the following remedies:

A. An order that Los Angeles Unified amend Student's February 26, 2014 and October 21, 2014 individualized education programs to offer Student a residential placement for educational purposes;

B. Compensatory education due to the failure of Student's IEP's of February 26, 2014 and October 21, 2014, to offer Student a residential placement for educational purposes; and

C. An order that Los Angeles Unified train its instructors and staff regarding their legal obligations to consider and offer residential placement for educational purposes to foster children who are eligible for special education from Los Angeles Unified.

Particularly in view of the Student's request for compensatory education, at the trial setting conference the parties were ordered to brief whether an evidentiary hearing regarding remedies should be held, and, if so, the time period during which evidence as to remedies is relevant.

The parties timely and simultaneously filed their briefs.[1] District contends that no evidentiary hearing is necessary, as the District Court did not authorize the ALJ to hold such a hearing, and there is no statutory authority to support such a hearing. District further contends that the relevant time frame for evidence should be limited to April 2013, the time of the earliest event that was at issue in Student's due process hearing complaint, through the date of completion of the due process hearing. Student contends that the law supports holding an evidentiary hearing on the issue of compensatory education, and that the District Court's remand order does not foreclose such a hearing. Further, Student contends that the focus should not be on the date the evidence arose, but by its relevance to the remedies Student seeks. For the reasons set forth below, an evidentiary hearing shall be convened to determine the appropriate relief to be awarded, and the evidence may date up through and including the present, so long as the evidence is relevant.

APPLICABLE LAW

Many special education cases authorize an ALJ to receive evidence regarding the type and nature of compensatory education requested by a party, if, after the hearing, the law and the evidence support an award of compensatory education, but insufficient evidence was presented at hearing of the appropriate amount of compensatory education to be awarded. (*See, Reid el rel. Reid v. Dist. of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524-526) (*Reid*); *Cupertino Union School Dist. v. K.A.* (N.D. Cal. 2014) 75 F.Supp. 3d 1088.) (*Cupertino.)* The authority arises from the principle that once a student has established a deprivation of a free appropriate public education, the court or hearing officer must undertake "a fact-specific exercise of discretion" designed to identify those services that will compensate the student for that denial. (*Wilson v. Dist. of Columbia* (D.C. Cir. 2011) 770 F. Supp. 2d 270, 277.)

With respect to the time period during which the evidence as to remedies is relevant, the *Cupertino* case, *supra*, provides some guidance. There, the court remanded the case for the ALJ to develop evidence of Student's present needs and consider to what extent those needs were affected by the services the District provided and failed to provide during the period of the denial of a free appropriate public education. (*Cupertino*, 75 F. Supp. 3d 1088, 1107.)

[1] After the parties filed their briefs, Student filed a request for leave to file a reply to District's brief, along with a reply brief; District filed papers moving to strike the reply brief; and Student filed papers opposing the motion to strike. The ALJ has not considered any of these papers in formulating this Order.

ANALYSIS

Here, the District's Court order ". . .REMANDS to the ALJ for a determination regarding the appropriate relief in light of the Court's ruling here and the evidence in the record." [Emphasis omitted.] The District Court's order on remand does not specifically direct the ALJ hold a hearing to receive additional testimony or other evidence, nor does it prohibit the ALJ from doing so.

In this case, the record before OAH is essentially devoid of evidence regarding compensatory education. As the above-cited cases demonstrate, the ALJ here had the authority to take additional post-hearing evidence regarding compensatory education if the ALJ had decided in Student's favor, as the District Court did. Therefore, there is no apparent reason why the ALJ should not also have the authority to hold an evidentiary hearing on remand from the District Court. Furthermore, in this case, due process and the interests of justice would best be served if the additional evidence was presented during a hearing, as opposed to being submitted by way of declaration or other method.

Accordingly, a hearing will be convened for the presentation of evidence regarding the remedies Student seeks, as set forth in the Order Following Trial Setting Conference After Remand, dated November 15, 2016. In particular, the additional evidence can include relevant evidence to the present time, such as evidence of Student's present needs and how they were affected by the District's conduct that the District Court found deprived Student of a FAPE. Specifically, as set forth in the District Court's Memorandum and Order, that conduct was: (1) failing to discuss placement at a residential treatment facility at the October 21, 2014 IEP team meeting; (2) predetermining the question of placement at a residential treatment facility at the October 21, 2014 IEP team meeting; and (3) failing to offer placement at a residential treatment facility in the February 26, 2014 IEP team meeting and October 21, 2014 IEP meetings.

IT IS SO ORDERED.

DATE: February 6, 2017

DocuSigned by:
Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings