

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. 2009080646

ORDER FOLLOWING PRE-HEARING
CONFERENCE

Administrative Law Judge (ALJ) Darrell Lepkowsky, of the Office of Administrative Hearings, Special Education Division (OAH) held a telephonic prehearing conference (PHC) in this matter on December 2, 2009. Mother appeared on behalf of Student. Mampre Pomakian and Donald Erwin, Attorneys at Law, appeared on behalf of the Los Angeles Unified School District (District). They were also joined by Julie Hall. The PHC was recorded.

Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates¹, Times, and Location. The hearing shall take place on December 9 and 10, 2009, at the OAH offices located at **15350 Sherman Way Suite 300 Van Nuys, CA 91406 Room: VN 2**. The hearing shall begin at 9:30 a.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 are those alleged in the due process complaint, as clarified by the parties and the ALJ at the PHC held on October 23, 2009:

a) Whether the District denied Student a free appropriate public education (FAPE) in its individualized education plan (IEP) offer of April 2009 by failing to include as part of the IEP team the following required IEP members who were essential to make an appropriate IEP offer: the school Principal, Student’s regular education teacher, and the school psychologist; and

¹ Please note that the hearing dates have changed due to the granted request for continuance per order dated 12/3/09.

b. Whether the District's offer, which was a change in Student's then educational placement, denied Student a FAPE because the offer of unsupervised bus transportation was inappropriate.

As proposed resolutions, Student requests an order that the District reimburse his Mother for her out-of-pocket costs for his private school placement and that the District prospectively fund Student's private school placement for the remainder of his third grade year.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Both parties may 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on December 3, 2009. At the hearing, the parties are to supply an exhibit binder containing their respective 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.

The parties are directed to submit as evidence copies of all LAUSD permits or intra-district transfers involving Student's attendance at a school other than his home school.

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 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.

Student intends to call the following witness: [Redacted]

The District intends to call the following witnesses: [Redacted]

Neither party has designated any expert witnesses.

5. Motions. Mother intends to request a continuance of the hearing based upon her college final schedule. She and the District intend to confer as to mutually agreeable dates and, if they are able to agree, will submit a joint request for continuance to OAH. The parties are also considering requesting that another mediation be scheduled in this case. If they are in agreement, they will submit a joint request to OAH.

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

7. Conduct of Counsel and Hearing Room Decorum. Counsel, all parties, and all witness 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. No food is permitted in the hearing room. **Please note that only water is permitted in the hearing room.**

8. Reimbursement. It is Student's burden to prove any amount of reimbursement requested and/or the type, amount, duration, and need of any request for compensatory education. It is also Student's burden to prove that a private placement was appropriate as well as the need and appropriateness of any request for prospective placement in a private school.

9. The hearing will be closed to the public at Mother's request.

10. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF [EACH PARTY/COUNSEL FOR EACH PARTY.] The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: December 2, 2009

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings