

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. 2009091897

ORDER FOLLOWING PREHEARING  
CONFERENCE

On January 13, 2010, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Ines Kuperschmit, Attorney at Law, appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of the Los Angeles Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on January 25, 26, 27, 28 and February 1, 2010. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered, at 15350 Sherman Way, Suite 300, Room: VN 2, Van Nuys, California 91406.<sup>1</sup>

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.

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<sup>1</sup> District is ordered to reserve a suitable room for the hearing. The hearing room should have: (1) one table for the Parent and Student's attorney or advocate; (2) one table for the District's attorney or advocate and representative; (3) one table for the ALJ; and (4) one witness table. A boardroom can usually accommodate a due process hearing.

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:<sup>2</sup>

a) From the 2003-2004 school year (SY) through September 24, 2007:

1) does an exception to the two-year statute of limitations exist because the District withheld information that is was required to provide to the Parent?

2) did the District deny Student a free appropriate public education (FAPE) by failing to meet its “child find” obligation by not assessing Student for eligibility to receive special education services?

3) did the District deny Student a FAPE by failing to qualify Student for special education services under the eligibility category of specific learning disability, and not providing her with special education services?

b) Did the District deny Student a FAPE from September 25, 2007, through January 14, 2008, by failing to:

1) meet its “child find” obligation by not assessing Student for eligibility to receive special education services?

2) qualify Student for special education services under the eligibility category of specific learning disability, and not providing her with special education services?

c) Did the District deny Student a FAPE from February 2008 through June 2009 because the District did not propose an individualized educational program that provided Student with sufficient behavioral support services to meet her unique needs?

d) As a proposed resolution, Student requests that the District provide her with 520 hours of compensatory education, over three years, in core academic areas, including reading, math, writing and English, plus transportation to remediation services. Student also requests that the District conduct a functional analysis assessment and develop a behavior intervention plan, and provide 96 hours of behavioral services from a non-public agency and District-funded social activities.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall use numerical designations, starting with S-1, and the

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<sup>2</sup> Any amendments to a Due Process Complaint, not permitted by this Order, shall comply with California Education Code section 56502, subdivision (e). The filing of an amended complaint will restart the applicable timelines for a due process hearing. (Title 20 U.S.C. § 1415(c)(2)(E)(ii).)

District shall use numerical designations, starting with D-1. 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 January 15, 2010.<sup>3</sup> 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. Any party requesting to play an audio recording at the hearing shall provide the appropriate player.

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 a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

Additionally, the District agreed to search for, and produce if located, documents relating to disciplinary incidents prior to SY 2007-2009, behavior incident reports during SY 2006-2007, Opportunity school transfer during SY 2007-2007 and attendance records for Student. These documents are not subject to January 15, 2010 document exchange.

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 has identified 56 witnesses to be called at the hearing, and the District has identified 20 witnesses. Some of the witnesses are listed by both parties. In light of the fact that five days have been scheduled for the hearing in this matter, it would be difficult to complete the hearing as scheduled. The parties are ordered to meet and confer by January 20, 2010, as to the schedule of witnesses. The parties have agreed 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. By 3:00 p.m. on January 21, 2010, each party shall serve on the other party and on OAH a tentative witness list, including the anticipated order of the witnesses, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may

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<sup>3</sup> For purposes of this Prehearing Conference Order, "file and serve" includes service by fax if the fax transmission is completed by 5:00 p.m. on the date provided for completion, and the parties have consented to receive service by fax.

call, depending on the flow of the hearing and the evidence.<sup>4</sup> Each party shall provide to the ALJ and the other parties at the commencement of the hearing a schedule of proposed witnesses with an estimated length of testimony. 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.

5. 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 PHC of January 13, 2010.

6. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the 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.

8. 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.

9. Special Needs and Accommodations. A Spanish language interpreter shall be provided.

10. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

11. 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

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<sup>4</sup> Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: January 19, 2010

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings