

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ALTOS SCHOOL DISTRICT.

OAH Case No. 2014060171

ORDER FOLLOWING PREHEARING
CONFERENCE

On December 22, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Richard Ruderman appeared on Student's behalf. Attorney Melanie Seymour appeared on Los Altos's behalf. The PHC was recorded.

Based on discussion with the parties, the ALJ issues the following orders:

1. Hearing Dates, Times, and Location. The hearing shall take place at **201 Covington Road, Los Altos, CA 94024**. It was initially scheduled for December 30-31, 2014. After discussion with the parties, January 6-8, 2015, were added as additional hearing days.¹ If the matter is not completed within the scheduled time, it will continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On December 30, 2014, the hearing shall begin at 9:30 a.m. and end at 5:00 p.m., and shall begin at 9:00 a.m. and end at noon on December 31. All remaining hearing days will be scheduled for 9:00 a.m. through 5:00 p.m.² Los Altos shall ensure that the facility for the hearing 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

¹ Ms. Seymour indicated that another hearing is scheduled for Los Altos beginning on January 6, 2015, and that although a different attorney will be lead counsel in the other case, Los Altos does not have the capacity to be in two hearings at one time. This case was filed first and is scheduled to commence on December 30, 2014, prior to the other matter. Ms. Seymour inquired about whether the other case would automatically be rescheduled. This ALJ informed her that no automatic continuances or scheduling changes would be issued.

² Both Mr. Ruderman and Ms. Seymour have conflicts the week of January 12, 2015, that may impact their ability to proceed if the matter is not resolved within the time scheduled. The conflicts were noted for the record and scheduling additional days will be addressed at hearing if necessary.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity:

Issue 1: Did Los Altos substantively deny Student a free appropriate public education during the 2012 extended school year, and the 2012-2013 school year including the extended school year by:

- a. Failing to offer Student:
 - i. An appropriate placement in the least restrictive environment;
 - ii. Adequate behavior services;
 - iii. Adequate speech and language therapy;
 - iv. Adequate occupational therapy services;
 - v. Adequate social skills training;³
 - vi. A transition plan pursuant to Education Code section 56345, subdivision (b)(4); and
 - vii. Appropriate measurable goals in all areas of need?

Issue 2: Did Los Altos procedurally and substantively deny Student a free appropriate public education during the 2013-2014 and 2014-2015 school years including the extended school years by:

- a. Preventing Parent(s) from meaningfully participating in Student's educational decision-making process or denying Student an educational benefit when it failed to:
 - i. Make a clear written offer of placement;
 - ii. Allow adequate observations by Parents; and
 - iii. Consider the continuum of placement options for him, including placement in his neighborhood school; and
- b. Failing to offer Student:
 - i. An appropriate placement in the least restrictive environment;
 - ii. Adequate behavior services;
 - iii. Adequate speech and language therapy;
 - iv. Adequate occupational therapy services;

³ The term adequate is interpreted to mean designed to meet Student's unique needs and reasonably calculated to provide educational benefit.

- v. Adequate social skills training;
- vi. A transition plan pursuant to Education Code section 56345, subdivision (b)(4); and
- vii. Appropriate measurable goals in all areas of need?

Issue 3: Did Los Altos fail to adequately assess Student during 2013-2014 school year by failing to assess in the following areas:

- i. Psychoeducational functioning;
- ii. Occupational therapy needs, including sensory processing;
- iii. Executive functioning;
- iv. Speech and language; and
- v. Health?

Issue 4: Did Los Altos deny Student a free appropriate public education for the 2014-2015 school year by failing to offer him:

- i. An appropriate placement in the least restrictive environment;
- ii. Adequate behavior services;
- iii. Adequate speech and language therapy;
- iv. Adequate occupational therapy services;
- v. Adequate social skills training;
- vi. A transition plan pursuant to Education Code section 56345, subdivision (b)(4); and
- vii. Appropriate measurable goals in all areas of need?

Proposed Resolutions: Student seeks an order that Los Altos denied him a free appropriate public education for the 2012 extended school year through the 2014-2015 school year including the extended school year; reimbursement for independent educational evaluations in the area of psycho-educational functioning, occupational therapy needs, speech and language, and health; an order that Los Altos convene an IEP team meeting and fund attendance of the independent assessors and specifically consider if Student’s needs can be met at his neighborhood school, and if so, an IEP enabling him to attend that school; reimbursement for Arbor Bay School including during the extended school years, speech and language therapy, occupational therapy, behavioral therapy, transportation, and assessments; and a prospective order placing Student at Arbor Bay School for the 2014-2015 school year, including extended school year, transportation, and related services including speech and language therapy, occupational therapy, behavioral therapy, and related transportation costs.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example “S-1” for Student or “D-1” for District). All pages of a party’s exhibit binder shall be consecutively numbered. Each exhibit will consist of one document or short series of documents that are related (for example, each IEP shall have its own exhibit rather than a single exhibit for all IEP’s). 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 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 will 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.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Only witnesses disclosed in a party's prehearing conference statement may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties are ordered to meet and confer to develop a proposed joint witness schedule. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party will only question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. Neither party has requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, Los Altos intends to record the hearing. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's

recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay 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. Motions. No motions are currently pending or anticipated. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to the prehearing conference.

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

10. Compensatory Education and 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Conduct 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. At present neither party anticipates the need for any special accommodation for any witness or party. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a request 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. At Student's request the hearing will be closed to the public.

14. 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 BUSINESS 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 OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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: December 22, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings