

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ESCALON UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014080266

ORDER FOLLOWING PREHEARING  
CONFERENCE

On September 19, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Charles Marson, Office of Administrative Hearings. Eileen Matteucci, Attorney at Law, and her law clerk Elizabeth Ballart appeared on behalf of Student. Jennifer R. Fain, Attorney at Law, appeared on behalf of the Escalon Unified School District (Escalon). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at 1520 Yosemite Ave., Escalon, California 95320, in a room to be provided by Escalon.<sup>1</sup> It shall take place on September 25, 29, and 30 and October 1 and 2, 2014, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On September 25, 2014, the hearing shall begin at 9:30 a.m. and end at 5:00 p.m. On September 29, 2014, the hearing shall begin at 1:30 p.m. and end at 5:00 p.m. On the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., 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.

A. During the 2012-2013 school year, the 2013-2014 extended school year, and the 2013-2014 school year up to September 27, 2013, did Escalon deny Student a free appropriate public education (FAPE) by:

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<sup>1</sup> At a minimum, the hearing room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for Escalon's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table.

1. Failing to assess Student to determine his eligibility for special education and related services;

2. Failing to identify him as eligible for special education and related services;  
and

3. Failing to offer him any special education or related services?

B. Did Escalon in its September 2013 assessment of Student deny him a FAPE because the assessment was inappropriately limited in scope?

C. From September 27, 2013, through the 2013-2014 school year and extended school year, did Escalon deny Student a FAPE because it:

1. Failed to offer him a substantively appropriate program of goals, services and placement; and

2. Predetermined its offer of placement in a county program?

As resolutions, Student seeks (1) compensatory education in the area of behavior services, including social skills training; (2) two hours weekly of social skills training for 35 weeks by a non-public agency; (3) reimbursement to Parents in the amount of \$5, 617.60 for the cost of a private assessment; and (4) reimbursement to Parents in the amount of \$3, 147.03 for educationally related costs incurred as a result of Escalon's alleged denials of a FAPE.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits in a way that makes clear the party offering it (such as "S1" or "D2"). 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 represent that each has served an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on September 18, 2014, 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.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

d) Student has identified 11 witnesses to be called at the hearing, and Escalon has identified 35 witnesses. Some of the witnesses are listed by both parties. In light of the fact that four and one half days have been scheduled for the hearing, examination of the number of witnesses proposed would make it difficult to complete the hearing as scheduled. Therefore, at the beginning of the hearing, each party shall serve on the other party and on OAH a tentative witness list, identifying the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Each revised witness list shall contain an estimate of the length of each witness's direct examination 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 their testimony.

5. Scope and Order of Witness Examination. 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, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony.

Student's motion to present the testimony of his assessor [redacted] was unopposed and is granted. At present no party intends to present the testimony of any other witness by telephone. A party seeking to present any witness by telephone shall move in advance for leave to do so; 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.

7. Electronic Recording of Hearing.

a. Audio Recording. Escalon's motion to make an audio recording of the hearing was granted subject to the conditions below. At present Student does not intend to

make an audio recording of the hearing. Any party that desires to make such a recording shall apply for leave to do so in advance from the ALJ and shall do so only on the 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.

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. (a) Student's motion to quash the subpoena served on him by Escalon was denied without prejudice to its renewal at hearing. A party's general right to subpoena a witness contains no specific exclusion for a disabled minor student. (Ed. Code, § 56505, subd. (e)(3); Cal. Code Regs., tit. 5, § 3082, subd. (c)(2).) However, Escalon was cautioned that the ALJ generally discourages presentation of the testimony of a disabled minor unless it is important to a party's case, and may require from Escalon, as a condition of enforcing the subpoena and receiving the testimony, a specific offer of proof of the anticipated content of and necessity for Student's testimony, including a showing that the facts sought to be proved through his testimony cannot reasonably be proved by other means.

(b) At present no other prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this 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. 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.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for the services of an interpreter. Escalon shall ensure that its facilities utilized for this hearing shall be in compliance with the Americans with Disabilities Act.

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

13. 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 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.

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

IT IS SO ORDERED.

Dated: September 22, 2014

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings