

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT on behalf of STUDENT,

vs.

LA MESA-SPRING VALLEY SCHOOL
DISTRICT,

AND CONSOLIDATED CASES

OAH CASE NOS. 2008120230;
2008110231; and 2008120781

ORDER FOLLOWING PREHEARING
CONFERENCE

On September 14, 2009, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Susan Ruff, Office of Administrative Hearings (OAH). Student's mother, who was assisted during part of the PHC by consultant Deborah Plotkin, appeared on behalf of Student (Student). Sarah Sutherland, Esq., appeared on behalf of the La Mesa-Spring Valley School District (District). The PHC was recorded.

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

1. Hearing Dates, Time, and Location. The hearing will be held on September 21 through September 25, 2009, beginning at 9:30 a.m.¹ The location of the hearing shall be:²

Office of Administrative Hearings
1350 Front Street, Suite 6022
San Diego, California 92101

2. Issues. The issues at the due process hearing are those alleged in Student's amended due process complaint filed on February 20, 2009, and the District's amended due process complaint, filed on February 20, 2009, as clarified by the parties and the ALJ during the PHC.

¹ Attorney Sutherland explained that she is set for a conference call in another matter on September 23, 2009, at 3:00 p.m. There will be a short recess in this hearing to permit her to engage in that conference call.

² Due to state office closures, the OAH hearing room may not be available on Friday, September 25, 2009. The ALJ and the parties will discuss the hearing location for that date on the first day of hearing.

Student presents the following issues for hearing and decision:

- a) Did the District deny Student a free appropriate public education (FAPE) for the 2006-2007 school year, for the time period commencing on November 10, 2006, through the failure to assess Student in all areas of suspected disability, specifically in the areas of behavior and occupational therapy?
- b) Did the District deny Student a FAPE for the 2006-2007 school year, for the time period commencing on November 10, 2006, through the failure to provide Student with appropriate related services in the area of sensory processing?
- c) Did the District deny Student a FAPE for the 2007-2008 school year through the failure to assess Student in all areas of suspected need, specifically in the area of sensory behavior?
- d) Did the District deny Student a FAPE for the 2007-2008 school year through the failure to provide Student with appropriate related services in the areas of social skills, sensory processing and appropriate one-to-one services?
- e) Did the District deny Student a FAPE for the 2008-2009 school year through the failure to assess Student in all areas of suspected need, specifically in the areas of behavior, speech and language, and occupational therapy?
- f) Did the District deny Student a FAPE for the 2008-2009 school year through the failure to provide Student with appropriate related services in the areas of social skills, sensory processing and appropriate one-to-one services?

The District presents the following issues for hearing and decision:

- a) Was the District's occupational therapy evaluation of Student, dated September 23 and 24, 2008, appropriate and did it meet all legal requirements?
- b) Was the District's language, speech and hearing evaluation of Student, dated October 20, 2008, appropriate and did it meet all legal requirements?
- c) Did the District's offer to amend Student's IEP regarding mainstreaming into the general education science class as well as reverse mainstreaming discussed at the February 18, 2009 IEP meeting and set forth in the February 20, 2009 program offer constitute a FAPE in the least restrictive environment?

3. Exhibits. The District's exhibits shall be pre-marked and placed one or more three-ring exhibit binders prior to the hearing. The District shall use numbers to identify exhibits. Each exhibit shall be internally paginated, by exhibit, or all of the exhibits shall be Bates stamped. Each exhibit binder shall contain a detailed table of contents.

Student does not need to place Student's exhibits into binders or pre-mark exhibits. Instead, Student's mother shall bring two copies of the exhibits that she would like to introduce into evidence to the first day of hearing. The ALJ will mark Student's exhibits during the hearing.

Student's mother will provide the District's counsel with a list of all exhibits that she plans to introduce into evidence by 4:00 p.m. on Tuesday, September 15, 2009. She will also hand deliver copies of any exhibits that Student plans to enter into evidence to the District's counsel by 4:00 p.m. on Tuesday, September 15, 2009. However, Student's mother does not need to give the District's counsel copies of any documents that were included in the evidence book(s) sent by the District to Student's mother. Instead, only documents that are different from or in addition to the documents included in the District's evidence book(s) need to be given to the District's counsel by 4:00 p.m. on September 15, 2009.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. 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.

By noon on Thursday, September 17, 2009, Student's mother will provide the District's counsel with a list of the witnesses she plans to call during the first two days of the hearing.

Neither party anticipates any need for special accommodations or interpreters for any witness. Should such a need arise, the party discovering the need shall send a written request to OAH, along with written notice to the opposing side.

5. Telephonic Testimony. Student's mother stated that she might be calling witness Suzanne Smith Roley to testify telephonically, but she is not certain. No other telephonic testimony is anticipated by either party. Should Student's mother determine that it is necessary for Suzanne Smith Roley to testify telephonically, or should either party determine a need for telephonic testimony by any other witness, the party shall send a written request to OAH and give written notice to the opposing side.

6. Order of Presentation of Evidence. This matter is consolidated. Student's mother shall present her case first, and then the District shall present its case.

7. Motions. Student's mother intends to file a request to amend her complaint. No other pretrial motions are pending or contemplated. Aside from the motion to amend filed by Student's mother, any other motion filed after the date of the telephonic PHC shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or mentioned during the PHC.

8. 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.

9. Reimbursement. If Student seeks compensatory education or reimbursement of expenditures as a remedy in this case, Student shall present admissible evidence of these expenditures and/or the type and amount of any compensatory education sought, as part of Student's case.

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 4:00 P.M. ON THE THURSDAY 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.

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

IT IS SO ORDERED.

Dated: September 15, 2009

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings