

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

NOVATO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009030076

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On 09/10/2009, a recorded, telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Richard T. Breen, Office of Administrative Hearings (OAH). Attorney Laurette Garcia represented Student. Attorney Emily E. Sugrue represented District.

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

1. Hearing Dates, Times, Location, and ALJ. The hearing shall take place on 09/15-17/2009. The hearing shall begin at 9:30 a.m. on the first day. The location is 1015 Seventh Street Novato, CA 94945. The hearing is scheduled to be conducted by Charles Marson, ALJ.

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:

a) Whether Student was denied a free appropriated public education (FAPE) because the District failed to adequately assess her in all areas of suspected disability in the fall of 2008.

b) Whether Student is entitled to an independent educational evaluation (IEE) at public expense pursuant to parent's November 14, 2008 and December 16, 2008 requests.

c) Whether Student was denied a FAPE because she was not found eligible for special education under the category of other health impaired (OHI) at IEP team meetings held on November 6, 2007 and October 29, 2008.

d) Whether Student was denied a FAPE because Mother was not provided with written notice of the District's response to Mother's September 4, 2008 request for specific assessments.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The due process hearing request and the District's response may not be used as exhibits. Student shall use numbers S1, S2, S3, etc..... and District shall use numbers D1, D2, D3, etc..... Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibits shall be sequentially numbered. In addition to the exhibits exchanged by the parties, the parties are to supply exhibit binders at hearing 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.

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. 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.

5. Telephonic Testimony. A party seeking to call a witness to testify by telephone shall move in advance for leave to do so.

6. Timely Disclosure of Witnesses/Exhibits. The parties shall comply with Education Code section 56505, subdivision (e)(7), which provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing.

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

8. 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.

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

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

IT IS SO ORDERED.

Dated: September 10, 2009

/s/

RICHARD BREEN
Administrative Law Judge
Office of Administrative Hearings