

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. 2013110883

(1) ORDER TO SHOW CAUSE WHY
THIS MATTER SHOULD NOT BE
DISMISSED, AND
(2) ORDER FOLLOWING
PREHEARING CONFERENCE

On February 3, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Alexa J. Hohensee, Office of Administrative Hearings (OAH). Diana Massaria, Director of Litigation Research, appeared on behalf of the Los Angeles Unified School District (District). Student's mother (Mother) could not be reached despite multiple calls to her telephone number of record, which emitted an audio signal and did not permit a voicemail message, and the PHC went forward with the District's representative. The PHC was recorded.

Order to Show Cause Why This Matter Should Not Be Dismissed

1. Order to Show Cause re Dismissal. Student failed to file a PHC statement with OAH in accordance with the Order Setting Due Process Hearing and Prehearing Conference served on Student on January 7, 2014. Student also failed to appear at the PHC as scheduled. For these reasons, Student appears to have abandoned his due process hearing request.

Unless a request for dismissal is filed prior to February 7, 2014, at 10:00 a.m., the parties are ordered to appear telephonically on **February 7, 2014, at 10:00 a.m.**, for an Order to Show Cause (OSC) hearing. OAH will initiate the call. At the OSC hearing, Student must show cause, if any, as to why the above-entitled matter should not be dismissed for failure to prosecute it. If Student fails to appear for the OSC hearing, then Student's due process hearing request will be considered abandoned and will be dismissed for failure to prosecute.

Order After Prehearing Conference

In the event that Student appears at the OSC hearing, and the above-entitled matter is not dismissed, the following order shall govern the due process hearing:

2. Due Process Hearing Dates, Times, and Location. If this matter is not dismissed at the OSC hearing, the due process hearing shall take place on February 11-13, 18 and 19, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The due process hearing shall begin each day at 9:00 a.m., and end at 4:30 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.

The hearing shall take place at the office of OAH, located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406.

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.

3. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

(1) Did the District deny Student a free appropriate public education (FAPE) by failing to accurately reflect the provisions of the Final Settlement Agreement and Release dated September 19, 2012 in Student’s October 2, 2012 individualized education program (IEP)?

(2) Did the District deny Student a FAPE by denying his parents meaningful participation in the March 28, 2013 IEP team meeting?

(3) Did the District deny Student a FAPE by failing to implement consistent behavioral supports from at least October 2012?

(4) Did the District deny Student a FAPE in the November 5, 2013 IEP by:

- (a) Offering a change of schools;
- (b) Failing to offer home to school transportation;
- (c) Failing to offer additional resource specialist services;
- (d) Failing to offer one-on-one assistance in Beyond the Bell activities after school hours?

4. 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, but shall place the letter “S” or “D” in front of the exhibit to designate if it is a Student or District exhibit (for example, “S-5, S-6, or D-1, D-2”). 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. 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. (Please note that each party must prepare a total of four copies of their binder of proposed documentary evidence: one for himself/itself, one to serve on the other party, and two to bring to the hearing for use by the ALJ and 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.

Education Code section 56505, subdivision (e)(7), requires that, at least five business days prior to hearing, each party serve on the other party a copy of all documents and a list of all witnesses and their general area of testimony that the party intends to present at hearing. Education Code section 56505, subdivision (e)(8), gives each party the right to prohibit the introduction of evidence at the hearing that has not been disclosed to that party at least five business days before 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.

5. 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.

The parties are ordered to meet and confer by 5:00 p.m. on February 6, 2014, as to the schedule of witnesses, and 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.

The parties are encouraged to review and shorten their witness lists prior to the hearing, bearing in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

6. Scope 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.

7. Telephonic Testimony. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Any party seeking to present a witness by telephone shall move in advance for leave to do so, unless the opposing party has stipulated that the witness may appear by telephone. The proponent of the witness 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

8. Order of Presentation of Evidence. If a witness is to be called by more than one party, each party shall complete its direct questioning of that witness the first time the witness is called. If a party's witness is called first by an opposing party, direct questioning will be completed at the same time as cross-examination.

9. 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 February 3, 2014.

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

11. 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.

12. Compensatory Education/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. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpretation services.

14. Hearing Closed To the Public. The hearing will be closed to the public unless otherwise requested by the parents and so ordered.

15. Settlement. The parties are encouraged to continue working together 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. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880.

IF A FULL AND FINAL WRITTEN SETTLEMENT AGREEMENT 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. THE PARTIES SHOULD ALSO LEAVE CONTACT INFORMATION SUCH AS CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. THE PARTIES SHOULD SIMULTANEOUSLY FAX THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT THE FAXINATION LINE at 916-376-6319.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. 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.

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

IT IS SO ORDERED.

Dated: February 03, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings