

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHARTER OAK UNIFIED SCHOOL
DISTRICT AND EAST SAN GABRIEL
VALLEY SELPA

OAH CASE NO. 2014040181

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 19, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Judith L. Pasewark, Office of Administrative Hearings (OAH). Lindsay Vose, Attorney at Law, appeared on behalf of Student. Karen Gilyard Attorney at Law, appeared on behalf of Charter Oak Unified School District and East San Gabriel Valley SELPA (District/SELPA). The PHC was not recorded.¹

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

1. Hearing Dates, Times, and Location. Due to an expedited hearing involving District counsel on May 27 and 28, 2014, this hearing is trailed on motion of District/SELPA and shall take place on May 29, 30, and June 3, 4, 6, and 9, 2014, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:30 a.m., unless otherwise ordered.

The hearing shall take place at the District's offices located at 20240 Cienega Avenue, Covina, CA 91723.

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. The issues at the due process hearing are listed below.

¹ The ALJ's recording equipment was not functional. The parties will be allowed to seek clarification of the PHC prior to commencement of hearing if required.

- a) Whether District failed to assess Student in all areas of known or suspected disability, specifically in Student's March 4, 2014 psychoeducational assessment and February 18, 2014 occupational therapy assessment;
- b) Whether the March 6, 2013 IEP failed to accurately state Student's present levels of performance and failed to craft appropriate and measurable goals, specifically Goals B and F;
- c) Whether the March 6, 2013 and March 24, 2014 IEP's:
 - (1) offered Student an educational placement which was not reasonably calculated to provide Student a FAPE for each school year and ESY;
 - (2) offered a program that was substantively defective by failing to provide Student with research based interventions;
 - (3) failed to offer Student appropriate occupational therapy services;
 - (4) failed to offer Student appropriate social skills support;
 - (5) failed to offer Student appropriate counseling services;
- d) Whether District committed procedural violations which impaired parent's right to participate in the IEP process and denied Student a FAPE by:
 - (1) failing to provide parents with prior written notice in August 2013; and
 - (2) failing to provide parents copies of completed assessments reports for the March 4, 2014 psychoeducational assessment and February 18, 2014 occupational therapy assessment.

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, 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. The parties represent that they have served their evidence binders on each other 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. 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 May 23, 2014, to determine the schedule of witnesses. The parties shall 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. 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.

6. 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.

7. 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 prehearing conference of May 19, 2014.

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

9. 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.

10. 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.

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

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

13. 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.

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

IT IS SO ORDERED.

DATE: May 19, 2014

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings