

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE COUNTY OFFICE OF  
EDUCATION AND RIVERSIDE COUNTY  
PROBATION DEPARTMENT.

OAH Case No. 2014041107

ORDER FOLLOWING PRE-HEARING  
CONFERENCE OF OCTOBER 27, 2014

On October 27, 2014, a telephonic prehearing conference was held before Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings. Tanya Whiteleather and Punam Grewal, Attorneys at Law, appeared on behalf of Parent and Student. Jack B. Clarke, Jr., Attorney at Law, appeared on behalf of the Riverside County Office of Education (RCOE). Eric Stopher, Deputy County Counsel, appeared on behalf of the Riverside County Probation Department (Probation). The ALJ recorded the PHC.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at RCOE's Moreno Valley Regional Learning Center, located at 13730 Perris Blvd., Moreno Valley, California, 92553. The telephone number for that location is (951) 826-4900. The hearing dates are November 4 to 6, 2014, and continuing day to day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. on all other days unless otherwise ordered.

At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. RCOE shall ensure that all parties, witnesses, and the ALJ have drinking water and tissue available to them, and that the hearing room and other facilities that will be used during the hearing are accessible in compliance with the Americans with Disabilities Act.

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 in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC, and are listed below.

*Issue One:* Whether RCOE denied Student a free appropriate public education by either failing to provide him with a neuropsychological independent educational evaluation as requested in April and May 2013, or file its own due process complaint to prove the validity of its own assessment?

*Issue Two:* Whether RCOE or Probation, acting either together or independently, denied Student his right to complete independent educational evaluations by his two independent evaluators, including the opportunity to conduct observations of Student?

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, RCOE or Probation exhibit (for example, “S-5, S-6,” or “C-1, C-2”). RCOE and Probation are encouraged to prepare a joint exhibit binder and all parties a joint binder containing their shared exhibits. 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 shall ensure that the other parties receive their binders no later than five days prior to the first day of the hearing, 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 absent a showing of good cause as to why the exhibit was not previously provided to the other parties, and the ALJ rules that it is admissible.

4. Witnesses. The parties shall informally meet and confer by 5:00 p.m. on October 31, 2014, to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. 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. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

5. Order of Presentation of Evidence and Scope of Witness Examination.

Student bears the burden of proof and shall present his evidence first, followed by RCOE, and then by Probation. Where the parties intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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. Only one round of re-direct and/or re-cross-examination shall be permitted, unless otherwise ordered.

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. 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.

If Student determines that he wishes to present any of his witnesses telephonically, his counsel shall first confer with opposing counsel to obtain their respective positions, and then will make a motion for the telephonic testimony, providing the reasons for its necessity.

7. Motions.

*Motion to Dismiss Issue One based upon collateral estoppel or res judicata:* RCOE indicated that it intends to move to dismiss Student's Issue one because it was addressed and ruled upon in a previous case involving Student and RCOE. RCOE shall file its motion no later than 5:00 p.m. on Wednesday, October 29, 2014. Student and Probation shall file any opposition or other responsive pleading no later than 9:00 a.m. on Monday, November 3, 2014.

At present no other prehearing motions are pending or contemplated. Any prehearing 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 the prehearing conference of October 27, 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 and 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. It is Student's burden to prove the necessity and validity of any of his proposed remedies.

11. Special Needs and Accommodations. At present no party anticipates the need for special accommodation for any witness or party, or for interpreter services. RCOE shall ensure that the hearing room and other facilities that will be used during the hearing are accessible in compliance with the Americans with Disabilities Act.

12. Hearing Closed To the Public. At the request of Student, 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: October 29, 2014

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings