

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. 2014060306

ORDER FOLLOWING PRE-HEARING  
CONFERENCE

On October 6, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Eileen Cohn, Office of Administrative Hearings (OAH). Jenny Chau, Attorney at Law, appeared on behalf of Student. Melissa L. Phung, Attorney at Law, appeared on behalf of District. The PHC was recorded. Based on discussion of the parties, the ALJ issues the following order, effective October 6, 2014:

1. Hearing Dates, Times, and Location. The hearing shall take place on October 13, 2014 at 1:30 p.m. and on October 14-16, 20 and 22, 2014 at 9:00 a.m., and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. At the request of the parties the hearing shall not proceed on October 21, 2014.

The hearing shall take place at OAH-Van Nuys, 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.

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

A) Whether the District denied Student a free and appropriate public education (FAPE) at the July 11, 2012 IEP team meeting by:

1. Depriving parents of their right to participate in the educational decision-making;
2. Failing to offer Student appropriate speech and language services;

3. Failing to offer Student appropriate occupational therapy services;
4. Failing to offer Student appropriate behavior intervention services; and
5. Failing to offer Student an appropriate placement.

B) Whether the District denied Student a FAPE at the August 20, 2013, November 6, 2013, and December 6, 2013, IEP team meetings<sup>1</sup> by:

1. Depriving parents of their right to participate in the educational decision-making;
2. Failing to offer Student appropriate speech and language services;
3. Failing to offer Student appropriate occupational therapy services;
4. Failing to offer Student appropriate behavior intervention services;
5. Failing to offer Student appropriate social skills services; and
6. Failing to offer Student an appropriate placement.

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, except each party shall make witnesses under its control reasonably

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<sup>1</sup> As pleaded, Student alleges that one IEP was developed over three IEP team meetings.

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 no later than October 8, 2014, to coordinate the availability and order of testimony of witnesses, estimate the time required to conduct direct, cross, redirect and re-cross, of each witness, to ensure the hearing is completed as scheduled. The parties shall ensure that there is a witness available to testify at all times during the hearing.

At the meet and confer, District shall supply the names of the witnesses who were the designated classroom teachers for its offered placements during the 2012-2013, and 2013-2014 school years, and who can testify as to the placements, including, but not exclusive to, the general composition of the class (e.g., number of pupils, cognitive level and range of disabling conditions, number of aides, expertise of teacher and aides.) There were two placements each school year and District shall supply Student with the identity of upward of all classroom teachers. If the teachers are no longer with the District, District shall also supply Student with the names of District personnel who are knowledgeable of the placement and who can testify about the general composition of the class, as referenced above.

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 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.

The witness schedule shall be provided to the ALJ the first day of hearing, prior to the first witness. The ALJ and the parties will discuss the length of time anticipated for examination of each witness, and the ALJ will finalize the witness schedule. 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. The parties stipulated to telephonic testimony of Student expert witness, Patricia Wade, M.S. CCC-SP, and the ALJ approved of the telephonic testimony. (Cal. Code Regs., tit. 5, § 3082, subd. (g).) Student shall provide the 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.

7. Timely Disclosure of Witnesses/Exhibits and Meet and Confer regarding exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits “at least” five business days prior to the hearing.

The parties shall meet and confer no later than October 8, 2014, to attempt to reach agreement as to the foundation of operative individual education plans, and other proposed exhibits.

8. Order of Presentation of Evidence. If a witness is to be called by more than one party, each party shall complete their examination of the witness, with the exception of rebuttal, before the witness is excused to avoid the unnecessary consumption of time expended in recalling the witness.

9. Motions. Student moved to admit the District policy manual, a 300 page document, posted on the District web-site and requested District stipulate to its admission. The ALJ denied Student’s motion without prejudice to raise it again at trial. The ALJ advised Student that the wholesale admission of the so-described document will be disfavored at hearing without an offer of proof as to why the complete document was relevant to the issues raised in the complaint. Student was advised to mark portions of the document that are relevant for admission, exchange the marked portions with District, discuss with District at the meet and confer on October 8, 2014 stipulations as to foundation, or and provide the proper foundation through a witness at hearing. At hearing, the ALJ will have the discretion to determine whether the document is relevant to the issues raised in the complaint.

District moved to bar the remedy of tuition reimbursement for the 2014-2015 school year on the grounds that Student is asking for reimbursement for a religious school that is not certified by the State of California. The ALJ denied District’s motion without prejudice to raise it at hearing and invited the parties to brief the issue for the ALJ.

No other 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 October 6, 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 during the hearing unless permission to the contrary is obtained from the ALJ. Student's request to record the hearing is denied.

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 translation services.

14. Hearing Closed To the Public. The hearing shall be closed to the public.

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.

DATE: October 06, 2014

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EILEEN COHN  
Administrative Law Judge  
Office of Administrative Hearings