

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060408

ORDER FOLLOWING PREHEARING
CONFERENCE AND GRANTING
CONTINUANCE AND SETTING
PREHEARING CONFERENCE AND
DUE PROCESS HEARING DATES

On July 21, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Kara Hatfield, Office of Administrative Hearings (OAH). Hans A. Gillinger, Attorney at Law, appeared on behalf of Student. Karen Gilyard, Attorney at Law, appeared on behalf of Pasadena Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The parties jointly requested a continuance and stipulated to new dates for hearing to allow time for the completion of independent educational evaluations after the start of the 2014-2015 school year. OAH has reviewed the request for good cause and considered all relevant facts and circumstances. Although the parties' requested dates are slightly more than 90 days after the currently scheduled hearing date, good cause exists for the continuance to allow time for the parties' stipulated independent educational evaluations to be completed after the new school year has started. Accordingly, the joint request is granted. The hearing shall take place on November 10, 12, 13, 17, 18, and 19, 2014, and continuing day to day, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m., with the exception of November 10, 2014, on which day the hearing shall begin at 1:30 p.m. and end at 5:00 p.m.

The hearing shall take place at the Pasadena Unified School District, 351 South Hudson Avenue, Room 227, Pasadena, CA 91109. District shall make sure that parking is available for Student and his representatives and the ALJ.

The parties shall 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 was not properly notified of the hearing dates or properly subpoenaed, as applicable.

2. Continued PHC. The telephonic PHC is continued to November 3, 2014 at 3:00 p.m. OAH will initiate the conference call. The parties have filed PHC statements, and need not file additional or supplemental PHC statements unless circumstances change so as to require such filing.

3. Issues and Proposed Resolutions. Student withdraws and OAH dismisses what had been identified in Student's complaint as Issue Three, regarding District's alleged failure to assess Student in the areas of fine and gross motor skills. The remaining issues to be heard at the due process hearing are listed below.

1) Whether District denied Student a free appropriate public education (FAPE) from June 4, 2012 through June 4, 2014, excluding the fall semester of the 2013-2014 school year, by:

- a) failing to identify Student as having an emotional disturbance and failing to offer Student placement or services designed to meet Student's unique needs in the area of social/emotional functioning and behavior;
- b) failing to offer Student appropriate academic services and support;
- c) failing to offer Student occupational therapy; and
- d) failing to assess Student for assistive technology until May 16, 2014, and failing to offer Student assistive technology services.

2) Whether District denied Student a FAPE in the June 4, 2014 IEP by:

- a) failing to offer Student an appropriate placement, specifically, placement in a residential treatment center; and
- b) failing to offer Student occupational therapy.

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. The parties shall serve 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.

The parties shall meet and confer to delete duplicate exhibits from the exhibit binders.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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. Motions. Student's request to audio record the hearing is granted. Only the parties' attorneys may audio record the hearing, and they shall only audio record when the hearing is on the record. Only the ALJ's recording shall be deemed the official transcript of the hearing, unless otherwise ordered. The audio recording may only be used by the attorneys, may not be shared with others, may not be played to any witness, and may not be published or disseminated in any form or by any means.

6. 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 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.

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

IT IS SO ORDERED.

DATE: July 21, 2014

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings