

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SOUTHERN KERN UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014061141

ORDER FOLLOWING PRE-HEARING  
CONFERENCE

On September 29, 2014, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Stacy L. Inman, Esq. appeared on behalf of Southern Kern Unified School District (District). Student's mother (Parent) appeared on behalf of Student. The PHC was recorded.

District submitted a prehearing conference statement on September 23, 2014. Student did not submit a prehearing conference statement.

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

1. Student's Motion to Continue the Hearing. Student made an oral motion at the PHC to continue the hearing at the PHC on grounds that Student expected the matter to settle and was unprepared for the hearing, and required time to locate and engage new counsel. District opposed the continuance. The motion to continue was argued and denied at the PHC. Student failed to establish good cause for the continuance of the hearing. District filed its complaint on June 20, 2014. Student's prior counsel withdrew from this matter on July 22, 2014. The parties jointly requested a second continuance of this matter on August 15, 2014 on grounds that both parties were unprepared for hearing, and the second continuance was granted. Student has had five weeks since the second continuance was granted to locate counsel and prepare for the hearing, and a further continuance is not warranted.

2. Hearing Dates, Times, and Location. The hearing is to commence on Tuesday, October 7, 2014 at 9:30 a.m., and continue on October 8 and 9 at 9:00 a.m., ending each day at 4:30 p.m. The hearing may be continued day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall take place at Southern Kern Unified School District, 3082 Glendower Street, Rosamond, CA 93560.

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. The issues to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, are:

- a. Was the District's March 19, 2014 psychoeducational assessment of Student properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?
- b. Was the District's February 18, 2014 speech and language assessment of Student properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?
- c. Was the District's February 28, 2014 occupational therapy assessment of Student properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?
- d. Was the District's March 12, 2014 functional behavior assessment of Student properly conducted, such that the District need not provide Student an independent educational evaluation (IEE) at public expense?

4. Exhibits. District has identified 10 Exhibits that it intends to present at hearing. Student has identified no exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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. Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment are expected to be subjects of direct examination.

5. Witnesses. District as of the PHC had identified six percipient witnesses. Student as of the PHC had identified no witnesses whom Student intends to present at hearing. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. The District will also inform Student of the identity of, and available contact information for, any witness identified by Student as an employee of the District who has left the District's employ, by 5:00 p.m. on October 1, 2014. The parties will 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.

6. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties are ordered to exchange final witness lists and exhibit binders by 5:00 p.m. on Tuesday, September 30, 2014. Witnesses and documents not disclosed on or before September 30, 2014 may be excluded at the request of the other party from introduction at the hearing.

Student is ordered to file Student's final list of witnesses, and final list of exhibits, with OAH by 5:00 p.m. on Tuesday, September 30, 2014. District is not required to, but may, submit an amended PHC Statement.

Each party reserves the right to present additional witness and documents for purposes of rebuttal.

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. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer on Thursday, October 2, 2014 at 10:00 a.m. regarding the schedule of witnesses for the hearing. District counsel for the hearing will place the telephone call to Parent to initiate the meet and confer. The parties are 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 shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

On the first day of hearing, before the first witness testifies, the parties shall provide the ALJ with one detailed hour-by-hour schedule of all witnesses expected to testify at the hearing, which list shall also include an estimate of time for each party's direct and cross-examination. The ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will

finalize the witness schedule. 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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.

10. Motions. The parties do not anticipate bringing any motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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.

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. Special Needs and Accommodations. None known as of the PHC. In the event that Student's final witness list to be filed with OAH and served on District counsel by 5:00 p.m. on September 30, 2014 includes a witness requiring accommodations, Student shall identify the witness and specify the required accommodations in the witness list, and shall discuss the required accommodations with District at the meet and confer to be held on October 2, 2014.

13. Hearing Closed To the Public. The hearing will be closed to the public. In the event that Student wishes to open the hearing to the public, Student shall file a Request to Open Hearing to Public with OAH no later than 5:00 p.m. on September 30, 2014, and shall discuss with District at the meet and confer to be held on October 2, 2014 the number of spectators expected and arrangements necessary to accommodate them. Opening the hearing to the public means that anyone may attend, including District personnel who are not otherwise witnesses.

14. Settlement. The parties are encouraged to continue working together to complete 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. 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 AND SHALL 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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

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

IT IS SO ORDERED.

DATE: September 29, 2014

/s/

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ROBERT MARTIN  
Administrative Law Judge  
Office of Administrative Hearings