

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WASHINGTON UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014050084

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 13, 2014, a telephonic prehearing conference was held before Administrative Law Judge Deidre L. Johnson, Office of Administrative Hearings. Attorney Colleen Snyder appeared on behalf of Student and Parent (Student). Attorney Michael Tucker appeared on behalf of the Washington School District. The PHC was recorded.

Based on discussion with the parties, the following order is issued:

1. Hearing Dates, Times, and Location: The hearing dates are confirmed. The hearing shall take place on October 21, 22, 23, 29, and 30, 2014, for a total of five days of hearing. The hearing shall begin at 9:30 a.m. on October 21, and at 9:00 a.m. on all other days. The hearing shall be held at Washington's offices at 930 West Acre Road, West Sacramento, California 95691.¹

Washington shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 .), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party without need for a subpoena. A witness will not be regarded as unavailable for

¹ 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. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them during the hearing.

purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable

3. Issues: The issues for hearing are limited to those alleged in Student's request for due process (complaint). The issues were discussed during the PHC, and are reframed, reorganized, and clarified below.²

Issue 1: Within the last two year preceding the filing of this complaint, did Washington deny Student a free appropriate public education for the school years from by failing to assess her in the area of:

- (a) Assistive technology, and/or
- (b) Occupational therapy?³

Issue 2: Within the last two year preceding the filing of this complaint, did Washington procedurally deny Student a FAPE because it:

- (a) Misrepresented to Parent Student's reading fluency and/or comprehension levels;
- (b) Failed to make a clear written offer of FAPE; and/or
- (c) Failed to have all necessary participants at the IEP team meetings;
- (d) Failed to report accurate progress on Student's goals; and/or
- (e) Terminated Student's speech and language services?⁴

Issue 3: Within the last two year preceding the filing of this complaint, did Washington substantively deny Student a FAPE because it:

- (a) Failed to offer measurable goals in all areas of need:
- (b) Failed to provide an appropriate placement in the least restrictive environment, including appropriate mainstreaming opportunities;

² 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).)

³ In their interim agreement, Washington and Student agreed to assessments in the areas of psychoeducational and speech and language and consequently, those matters are dismissed as moot.

⁴ Student's complaint clearly lists this failure to implement his speech and language services as a procedural violation only; hence, it is not included as a substantive violation.

(c) Failed to offer an individualized reading program; and/or
(d) Failed to offer related services to enable Student to benefit from her education, in the areas of:

- (i) Assistive technology;
- (ii) Speech and language; and/or
- (iii) Occupational therapy.⁵

Proposed Resolutions and Defenses: Student's proposed resolutions and District's defenses were discussed during the PHC. District retains the right to present all relevant defenses during the hearing.

4. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs and accompanied by a detailed exhibit list. Student's **exhibit list** shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's **exhibit list** shall identify each exhibit by number along with a "D" (e.g., D1).⁶ Any document over five pages in length shall be internally paginated. Each exhibit binder shall contain a detailed table of contents or list. Each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing.⁷

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible.

⁵ For all of these issues, Student used the word "provide" instead of "offer." During the PHC, the ALJ ordered Student to clarify by the beginning of the hearing the extent to which his issues regarding "offers" also may include failure to "provide" or failure to implement a particular IEP provision.

⁶ The parties are not required to add their identifying letter to their exhibit tabs.

⁷ Education Code section 56505, subdivision (e)(7).

5. Witnesses: **By close of business on Thursday, October 16, 2014, the parties shall meet and confer to formulate their witness lists and schedules. At the commencement of the hearing, the parties will present the witness schedules.**⁸ 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. 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 shall manage the number of witnesses so that the party's evidence will be presented within its approximate allocation of 50 percent of the total hearing time.

The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. Both parties reserve the right to call witnesses disclosed on their lists, other than those listed below.

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).) The parties did not request the telephonic testimony of any witness during the PHC.

7. Order of Presentation of Evidence and Scope of Examination: Student shall produce her evidence first. Where Student and District 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 of a witness, each party shall be limited in examining the witness to only those matters raised in the immediately preceding examination unless otherwise ordered.

8. Closed Hearing: Consistent with Student's request, the hearing shall be closed to the public unless she requests otherwise.

9. Motions: 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 this PHC.

10. Special Needs and Accommodations: No special accommodations were requested during the PHC. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

⁸ Ms. Snyder and Mr. Tucker were not cognizant enough of their witness schedules and deferred to their respective trial attorneys for these decisions.

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 electronic devices shall be turned off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ.

12. 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

13. Settlement: The parties are encouraged to negotiate 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880**.

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. **IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.** OAH will check for messages the evening prior to the hearing and the morning of the hearing. If a settlement is subject to board approval, the parties may file a request to vacate the hearing dates and set a telephonic status conference not less than two weeks following the date anticipated for board approval.

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

DATE: October 16, 2014

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings