

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PERRIS UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014051181

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 8, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings. Michelle Powers, Attorney at Law, appeared on behalf of Student and Student's parents (Student). Jack Clarke, Jr., Attorney at Law, appeared on behalf of the Perris Union High School District (Perris). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall begin on August 19, 2014, at 9:30 a.m., shall continue on August 20, 21, and 25, 2014, at 9:00 a.m., and shall continue day to day thereafter, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at:

**Perris Union High School District
155 East Fourth Street
Perris, CA 92570**

Perris shall ensure that the hearing room is in compliance with the requirements of the Americans with Disabilities Act, and similar laws.

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. The issues at the due process hearing are listed below.¹

a) Did Perris deny Student a free appropriate public education from May 2013 through May 2014 by failing to assess Student appropriately in all areas of suspected disability?

b) Did Perris deny Student a FAPE from May 2013 through May 2014 by failing to provide an appropriate educational program for Student in the following respects: 1) By failing to offer or provide appropriate accommodations, assistive technology, and related services to address Student's vision loss and mobility problems related to vision; 2) By failing to offer or provide appropriate accommodations, assistive technology, and related services to address Student's hearing loss; 3) By failing to offer or provide speech and language services, occupational therapy services, adapted physical education services, educationally related mental health services, and individualized academic instruction; 4) By failing to address in the individualized education program offer, Student's seizure disorder, speech and language deficits, memory retention problems, attention difficulties, fine and gross motor skills deficits, and cognitive processing deficits; 5) By failing to offer extended school year services; and 6) By failing to provide some of the accommodations called for in Student's IEP, including behavior intervention services?

c) Did Perris deny Student a FAPE from May 2013 through May 2014 by failing to respond appropriately when Student was bullied at school?

d) Did Perris deny Student a FAPE from May 2013 through May 2014 by failing to provide Student with a full and complete copy of Student's educational records?

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 consecutively paginated, for example by Bates-stamping. Each exhibit binder shall contain a detailed table of contents. 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.

¹ Student's due process request also contains a fifth issue which alleges violations of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and various civil rights and tort laws. Those matters are outside the jurisdiction of OAH in a special education due process proceeding and the fifth issue is hereby dismissed from the case.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably 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.

5. 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.

6. Motions. No 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 PHC.

7. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

8. 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. There is to be no audio or video recording in the hearing room without the permission of the ALJ.

9. 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.

10. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

11. Hearing Closed To the Public. At the request of the parent, the hearing will be closed to the public.

12. 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 4:00 P.M. ON 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.

IT IS SO ORDERED.

DATE: August 8, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings