

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

RIO SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014070127

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On October 10, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Eileen Cohn, Office of Administrative Hearings. Sundee Johnson, Attorney at Law, appeared on behalf of District). Jane DuBovy, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

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

1. Hearing Dates, Times, and Location.

A. Joint Motion to Consolidate and Continue is denied without prejudice.

The parties represented that on October 8, 2014, Student filed his Complaint (11:40 a.m.) with similar issues and evidence, and the parties filed a joint motion to consolidate District's case with Student's case and continue District's case to the dates set for Student's case. At the time of the PHC, OAH had not processed Student's complaint and the joint motion and they were unavailable to the ALJ. The parties requested that the matter be consolidated and continued to the dates set for Student's complaint, and the ALJ denied the request without prejudice, pending the processing of the complaint and the motion, and OAH's decision on the parties' motion to consolidate and continue District's case. The parties represented that now that the Student's independent assessments have been completed, the parties will have an opportunity to participate in an individual education program (IEP) meeting about their respective assessments, which are the subject of their dispute, prior to the anticipated mediation and hearing dates in the consolidated matter, and as such, be better positioned to resolve their dispute.

B. Hearing Dates. The hearing shall take place on October 27, 2014, 1:30 p.m., October 28, 29 and 30, 2014, 9:00 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at the District's offices located at 3300 Cortez Street, Oxnard, CA 93036.

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.

Whether the District’s April 29, 2014 assessments were appropriate such that Student is not entitled to an independent educational evaluations (IEE’s) in the following areas:

- A. Psychoeducation;
- B. Speech and language; and
- C. Occupational therapy.

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 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 prior to the hearing 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.

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.

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.

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. 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.

7. Timely Disclosure of Witnesses/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 prior to the hearing to reach agreement on the operative individual education programs and the assessment reports at issue and foundation for the admission of proffered documents.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: District witnesses; Student witnesses. If both parties intend to call the same

witness, the testimony of that witness shall be completed for both parties before the witness is excused (except for rebuttal) and the next witnesses called.

9. Motions. The parties' oral motion to continue the matter and to consolidate it with the Student's complaint is denied without prejudice, for the reasons set forth in number 1 (A) above. Any motion filed after this date regarding District's case 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 10, 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 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.

Student's request to record the proceeding is denied without prejudice to raise the request again if the matter is consolidated and continued, or if not, at the hearing.

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. Student's request to record the proceeding as an accommodation for counsel's legal assistant is denied without prejudice to raise the request again if the matter is consolidated and continued, or if not, at hearing. Other than Student's requested accommodation at present neither party anticipates the need for special accommodation for any witness or party.

14. Hearing Closed To the Public. The hearing is 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 10, 2014

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings