

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. 2014080177

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On March 2, 2015, a prehearing conference was held telephonically before Administrative Law Judge Robert G. Martin, Office of Administrative Hearings (OAH). Janeen Steel, Esq., Edith Madrid, Esq., and John Walker, Esq. appeared on behalf of Student. Sundee Johnson, Esq. appeared on behalf of Pasadena Unified School District. The PHC was recorded. Each party filed a prehearing conference statement.

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

1. Hearing Dates, Times, and Location. The hearing is to commence on March 9, 2015, continue on March 10-12, 2015, and continue thereafter day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 1:30 p.m. on March 9, 2015, and at 9:00 a.m., on all other days unless otherwise ordered. The hearing shall take place at Pasadena Unified School District, 351 South Hudson Avenue, Room 227, Pasadena, CA 91109.

2. The District 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.

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 whether the District denied Student a free appropriate public education:

- a. By failing to provide and fund Student's off-campus room and board for nights when Student is unable to stay in the California School for the Blind dormitories, for the period from June 5, 2014 to the filing of the complaint?
- b. By failing to provide transportation, room and board for Parent to stay near CSB in order to monitor and assess Student's need for prompt medical supervision and to address Student's emotional needs, for the period from June 5, 2014 to the filing of the complaint?
- c. By failing to provide Student counseling services to address Student's anxiety for the period from June 5, 2014 to November 6, 2014?
- d. By failing to provide Student prior written notice of District's refusal to provide and fund Student's off-campus room and board for nights when Student is unable to stay in the CSB dormitories?
- e. By failing to provide Student prior written notice of District's refusal to provide transportation, room and board for Parent to stay near CSB in order to monitor and assess Student's need for prompt medical supervision and to address Student's emotional needs?
- f. By predetermining for Student's June 5, 2014 and/or October 29, 2014 Individualized Education Program meetings that Student would stay in the CSB dormitories five nights per week?
- g. By predetermining for Student's June 5, 2014 and/or October 29, 2014 IEP meetings that Parent would not be provided transportation, room and board for Parent to stay near CSB in order to monitor and assess Student's need for prompt medical supervision and to address Student's emotional needs?

4. Exhibits. Student as of the PHC had identified 95 exhibits that Student intended to present at hearing. District has identified 5 Exhibits that it intends to present at hearing. 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. Student as of the PHC had identified 13 percipient witnesses and 3 expert witnesses that Student intended to present at hearing. District as of the PHC had identified 10 percipient witnesses, five of whom were also identified by Student, and no additional expert witnesses. 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 Tuesday, March 3, 2015. 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 Monday, March 2, 2015. Witnesses and documents not disclosed on or before March 2, 2015 may be excluded at the request of the other party from introduction at the hearing.

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

7. Telephonic Testimony. Student requested that 10 witnesses, all of whom reside near to, and work at, the CSB in Fremont, California, be allowed to testify at the hearing by telephone. Whether a witness may appear by telephone is a matter within the discretion of the ALJ. Cal. Code Regs., tit. 5, § 3082, subd. (g). Student is granted leave to present telephonic testimony of (REDACTED). Student 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 witness will testify from a quiet location over a landline telephone. District 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, March 5, 2015 at 9:00 a.m. regarding the schedule of witnesses for the hearing. Student's counsel for the hearing will place the telephone call to District's counsel 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. 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 made known. Additional information concerning a requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

12. 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.

13. Recording of Hearing. Student's request to audio tape the hearing is granted. District may record the hearing if District wishes. The recording by OAH shall be official record of the hearing and no stoppages of the hearing will be granted to accommodate the parties' recording, and parties must cease recording when the ALJ informs the parties that the matter is off the record. Failure to comply will cause the ALJ not to permit the offending party to record the hearing. Any recording of the hearing made by Student or District shall

be solely for the use of the party making the recording, and counsel for the party, and shall not be shared with any third party.

14. 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.

15. Special Needs and Accommodations. OAH will provide a Spanish language interpreter for Parent for all days of hearing, and a reader for witness (REDACTED) for the day(s) of her testimony. Student indicated that Student expected to call Ms. Yamada on March 11 or 12, 2015; the particular day will be confirmed on the first day of hearing.

16. Use of Demonstrative Exhibits. Student requested permission to present demonstrative exhibits during opening and/or closing arguments, such as blow-ups summarizing Student's factual or legal arguments. Student did not have the proposed demonstratives prepared to provide to District by close of business on March 2, 2015. The parties will discuss the proposed demonstratives at their meet and confer. Whether to allow their use will be addressed by the ALJ at the commencement of the hearing.

17. Hearing Closed To the Public. The hearing will be closed to the public.

18. 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.

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

IT IS SO ORDERED.

DATE: March 2, 2015

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings