BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018060529
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017120075 ORDER FOLLOWING PREHEARING CONFERENCE

On September 24, 2018, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. David Mishook, Attorney at Law, appeared on behalf of Oakland Unified School District. Thomas Douvan, Attorney at Law, appeared on behalf of Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on October 2, 2018, at 9:30 a.m., October 3-4, 2018, at 9:00 a.m., and continue day to day, at the discretion of the ALJ. The hearing shall take place at OAH's Oakland Office located at 1515 Clay Street, Suite 206, Oakland, California, 94612.

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 and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, were discussed and clarified during the PHC and are listed below.[1]

[1] During the PHC, both parties agreed that these are the issues to be tried at hearing. Upon receipt of this Order, if the parties disagree that the issues as framed accurately reflect

Oakland's Issues

Issue 1: Does Oakland's May 7, 2018 individualized education program offer provide Student a free appropriate public education in the least restrictive environment?

Issue 2: Are Oakland's academic, speech and language, psycho-educational, occupational therapy, and transition assessments legally compliant such that Parent is not entitled to independent educational evaluations in those areas at public expense?

Oakland's Proposed Resolutions: Oakland seeks an order that the May 2018 IEP offers Student a FAPE in the least restrictive environment and that Oakland may implement the IEP without consent, or if Parent refuses to allow a change in placement, an order that Oakland is no longer obligated to provide Student a FAPE. Oakland further requests an order that its assessments are appropriate and it need not fund independent evaluations.

Student's Issues[2]

Issue 3: Beginning January 1, 2017, through December 7, 2017, did Oakland deny Student a FAPE by failing to properly provide comprehensive assessments in all areas of suspected disability as follows:

a. failing to conduct a neuro-psychological educational evaluation;

b. failing to conduct a health assessment;

c. failing to assess Student's behaviors;[3]

d. failing to assess prior to offering a change in placement from a non-public school at the October 17, 2017 IEP team meeting; and

e. failing to assess pursuant to Parent's June and November 2017 requests?

Issue 4: Did Oakland deny Student a FAPE by failing to timely assess her pursuant to the December 2017 assessment plan?

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the discussions during the PHC, they shall immediately file a written notice indicating their specific objections with OAH. Any objections will be addressed at the start of the hearing.

[2] During the PHC, Student withdrew her issue regarding Oakland's alleged failure to convene an early resolution session, and clarified timeframes for all remaining issues.

[3] Oakland's objection that this sub-issue was not specifically identified as an issue in the complaint was noted for the record and overruled.

Issue 5: Did Oakland deny Student a FAPE by failing to provide an appropriate educational program to meet her individual and unique needs from June 1, 2017, until the time of hearing, by failing to implement the April 2017 IEP as follows:

a. failing to provide a non-public school placement;

b. failing to provide speech and language services;

c. failing to provide counseling services; and

d. failing to provide social skills training?

Issue 6: Did Oakland deny Student a FAPE by failing to provide an appropriate educational program to meet her individual and unique needs from June 1, 2017, until the time of hearing, by failing to offer and provide the following:

a. an appropriate placement; and

b. appropriate programming, including reading and comprehension services, vision therapy, and life skills training?

Issue 7: From June 1, 2017, through the time of hearing, did Oakland deny Student a FAPE by failing to prepare appropriate individual transition plans and by unilaterally implementing modifications to these plans without Parent consent?

Issue 8: Did Oakland fail to convene an appropriate and complete IEP team at the October 12, 2017 IEP team meeting by:

a. improperly including its Director of Legal Services; and

b. failing to ensure the attendance of an appropriate special education teacher?

Issue 9: Did Oakland deny Student a FAPE by failing to produce all 2018 assessment reports within five days of Parent's April 5, 2018 request for records?

Issue 10: Did Oakland deny Student a FAPE by failing to convene an IEP team meeting within 60 days of Parent signing the assessment plan on January 17, 2018?

Student's Proposed Resolutions: Student's proposed resolutions include several independent educational evaluations, specifically, vocational, academic, speech and language, psycho-educational, health, occupational/employment, occupational therapy, assistive technology, and transition; compensatory education including one-to-one academic instruction; speech and language services; occupational therapy services; social skills; counseling; transition services; life skills training; driver's education; job training; and/or a

non-public school placement or private school placement; transportation costs related to the compensatory services; a trust account in the amount of $50,000 for educational and counseling services which Student can access even after she turns 22 years old; and provision of special education and related services after the age of 22 to allow Student to obtain a diploma. Student also seeks an order requiring Oakland to reconvene the October 2017 IEP team meeting after receipt of the independent evaluations with a specific direction that the Director of Legal Services shall not attend unless Student's attorney attends. Finally, Student asks that Oakland be required to produce all educational records for 2015-2016 and for 2018 including all assessment reports; and provide an appropriate educational placement.

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. There shall be only one document or a short series of related documents per each exhibit tab. Each exhibit binder shall contain a detailed table of contents. The parties shall serve 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 timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

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. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

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 parties shall meet and confer no later than September 26, 2018, to discuss the order of witnesses and likely length of time for direct and cross examinations. The parties shall attempt to reach agreement on a witness schedule for the hearing.

At the start of the hearing, the parties shall provide the ALJ with a proposed joint written witness schedule for the hearing. Student shall have witnesses available in case agreement on a witness list is not reached. If an agreement is not reached, the parties shall submit individual proposed witness schedules. The ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling

issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, 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.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. 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. The proponent of the testimony shall also ensure that the room from which the witness is testifying has sound equipment that allows all hearing participants to hear the witness' testimony. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student requested permission to allow Ashley Thompson, the Assistant Director for Lindamood Bell, to testify telephonically. Oakland did not oppose this request. Student's request is granted subject to the above requirements.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. Oakland is also authorized to audio record the hearing subject to the same conditions.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, both parties bear the burden of proof as to their respective issues. Both parties agree that Student shall present her case first, followed by Oakland.

9. Motions. At the start of the PHC, Oakland withdrew its request for a continuance of the hearing dates. 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 three business days prior to the prehearing conference of September 24, 2018.

10. 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. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ at the time of hearing in written form.

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. Special Needs and Accommodations. Neither party has requested accommodations for any special needs. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Closed To the Public. At the request of Student, the hearing will be 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb.

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: September 24, 2018

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings