BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2014120167
v.	ORDER FOLLOWING PREHEARING CONFERENCE AND DENYING MOTION TO CONTINUE
OAKLAND UNIFIED SCHOOL DISTRICT.	

On April 3, 2015, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Blanca Vaughan, Attorney at Law, appeared on behalf of Student. David Mishook, Attorney at Law, appeared on behalf of Oakland Unified School District (Oakland). The PHC was recorded.

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

Oakland's Motion to Continue

On April 1, 2015, Oakland filed a motion to continue the hearing, currently set to begin on April 14, 2015. Oakland claimed that it could not begin the due process hearing on April 14, 2015, because the two attorneys assigned to the matter already had other hearings set to begin on April 13, 2015.[1] Further, Oakland claimed it did not have a sufficient number of administrators to attend two or more simultaneous hearings.

Student filed an opposition to the motion to continue on April 2, 2015, and argued that this was Oakland's second motion to continue the due process hearing, and that the previous motion had been granted because Oakland claimed its attorney was unavailable for hearing that date due to a calendar conflict. The first request was unopposed by Student when it was addressed at a PHC on January 5, 2015. Student argued that law firm representing Student has several attorneys that could represent it at hearing, at least three of whom had worked on the case since it was filed in November 2015.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the

[1] A third ground cited by Oakland, the possibility of settlement if the parties were given additional time to negotiate, was not relevant in this particular matter.

unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

In support of its motion, Oakland provided the case numbers for cases it claims have hearing dates that conflict with the start date of April 14, 2015, in the instant case. However, each of those conflicting hearing dates were set after the hearing dates in this matter were confirmed on January 5, 2015. The hearing dates in each case were set with input from, and the consent of Oakland's attorneys. Further, the law firm representing Oakland has multiple attorneys, not just the two attorneys assigned who have claimed conflicts for the same hearing dates. Finally, although Oakland claimed in its motion to continue that it was "a District with limited staff and resources who [*sic*] has never had to participate in simultaneous hearings, let alone three[,] . . ." it is in fact not a small school district in terms of the number of students it has, as well as in terms of staff available to serve as representatives at a due process hearing. Good cause for a continuance was not established and Oakland's request to continue the due process hearing from beginning April 14, 2015, is denied.

1. Hearing Dates, Times, and Location. The hearing shall commence on April 14, 2015, at 9:30 a.m., in the OAH offices located at 1515 Clay Street, Suite 206, Oakland, California, 94612, and shall continue on April 15 and 16, 2015, and day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day after April 14, 2015, at 9:00 a.m., and shall end at 5:00 p.m. each day unless otherwise ordered.

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.

a) Did Oakland deny Student a free appropriate public education by failing to assess him in all areas of suspected disability, including assessments for autism, specific learning disability, behavioral deficits, social-emotional deficits, speech and language

deficits, occupational therapy issues, and/or attention deficit hyperactivity disorder (to establish eligibility as a child with other health impairment) from November 21, 2012, to November 20, 2014?

b) Did Oakland commit procedural violations that denied Student a FAPE or caused him to lose educational opportunity, and/or significantly impeded Parent from meaningful participation in the individualized education program development process, by:

1) Failing to translate IEP's into Spanish;

2) Failing to convene a timely triennial IEP team meeting between November 21, 2012 and November 20, 2014; and

3) Failing to have required IEP team members at the IEP team meeting on October 13, 2014?

c) Did Oakland deny Student a FAPE by failing to provide him with goals and a program (such as placement and the related services of occupational therapy, speech and language therapy, and counseling), that met his unique needs, and would provide him with educational benefit as a child with autism from November 21, 2012 to November 20, 2014?

The issues shall be discussed further at the commencement of the due process hearing, and there will also be a discussion of proposed resolutions at that time.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing, with each exhibit separated from the next by a divider. It is suggested, but not ordered, that the parties use different colored binders for ease of use by witnesses when testifying. The parties shall use numbers to identify exhibits. At the hearing the ALJ shall place the letter "S" or "D" in front of an offered or admitted exhibit, or an exhibit referred to by a witness, 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 numbered or Bates-stamped. 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 must serve each other with the exhibit binders at least five business days before the commencement of the due process hearing unless they agree to a shorter time for the exchange. 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. The parties are asked, but not ordered, to provide curricula vitae or resumes for witnesses testifying in their professional capacity, such as teachers.

Inclusion of an exhibit in an exhibit binder, or presentation of an exhibit to the other side according to the agreed upon timeline, does not guarantee the admission of an exhibit. The ALJ shall determine whether the exhibit is relevant and admissible. Parties shall be

prepared to make an "offer of proof" to the ALJ at hearing as to the admissibility of an exhibit.

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. The parties have agreed that curricula vitae or resumes are not included as exhibits subject to this order.

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. This means Oakland is responsible for the attendance of its current employees, and they need not be subpoenaed by Student. In the event that a proposed witness is no longer employed by Oakland, its attorney is urged, but not ordered, to provide contact information to Student so that the witness can be subpoenaed.

The parties are ordered to meet and confer by 5:00 p.m., April 9, 2015, as to the schedule of witnesses. 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 schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses out of order or more than once. 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.

Prior to the commencement of the due process hearing, 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. The witness schedule will be reviewed and revised as necessary at the end of each hearing day.

5. Scope of Witness Examination. If a witness is to be called by more than one party, the second party questioning the witness may expand cross-examination to include questions that might have been asked on direct examination had the party called the witness first. 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. The proponent of the witness shall provide the proposed witness with a complete set of

exhibit binders from the parties containing all of each party's exhibits, prior to the hearing. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Order of Presentation of Evidence. Since Student filed this case, his evidence shall be presented first, if at all possible.

8. Motions. As previously discussed, Oakland's motion to continue the due process hearing is denied. No other 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 prehearing conference of April 3, 2015.

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

10. 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 during the hearing unless permission to the contrary is obtained from the ALJ.

11. Audio Recording of the Hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. The ALJ has informed the parties that they may record the hearing. Although neither party indicated that it would be recording the hearing, should a party later decide to do so, the ALJ must be informed. The parties are advised that OAH always makes a digital recording of the proceedings, and this recording is the official record of the hearing. Parties who record the hearing are to turn off their recorders whenever the ALJ orders that the hearing is "off the record." Any violation of this order to turn off recorders when the matter goes off the record will result in the revocation of permission to record the hearing.

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

13. Special Needs and Accommodations. A Spanish language interpreter is required. OAH shall provide the interpreter. At present neither party anticipates the need for any other special accommodation for any witness or party,

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, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as

soon as the need is known. Information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

14. Hearing Open/Closed To the Public. 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 noon on April 10, 2015, 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: April 3, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings