BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017030950 OAH Case No. 2017050146 ORDER FOLLOWING PREHEARING CONFERENCE

On October 2, 2017, 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. Mother 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 at OAH's Oakland office located at 1515 Clay Street, Suite 206, Oakland, California, 94612, on October 17, 18, 19, 24, 25,26, 31, and November 1, 2017, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, 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 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.

Oakland's Issues

Issue 1: Does Oakland's December 14, 2016 individualized education program offer Student a free appropriate public education in the least restrictive environment?

Issue 2: Is Oakland's fall 2016 psycho-educational evaluation of Student legally compliant such that Student is not entitled to a publically funded independent psycho-educational evaluation?

Oakland's Proposed Resolutions

Oakland seeks Orders finding that (1) its December 2016 IEP offers Student a FAPE in the least restrictive environment and that it may implement this IEP without consent; and (2) its fall 2016 psycho-educational evaluation of Student meets all legal requirements such that Student is not entitled to a publically-funded independent psycho-educational evaluation.

Student's Issues

Issue 3: During the 2016-2017 school year through the time of hearing, did Oakland deny Student a FAPE by:

a. failing to provide a copy of Student's education records within five days of her request;

b. failing to implement Student's behavior intervention plan or behavior support plan from Aspire College Academy;

c. failing to offer and provide an appropriate behavior plan;

d. failing to offer and provide a program that would allow Student to make progress appropriate in light of her circumstances as shown by school based testing;

e. failing to implement services from her Aspire IEP, and Oakland's September 2016 and October 2016 IEP's;

f. failing to provide an independent psycho-educational evaluation in response to Student's December 2016 request;

g. failing to complete behavior emergency reports and hold meetings within one day of restraining Student;

h. conducting a mental health assessment of Student without consent and without notice to Parent;

i. failing to assess Student for a speech and language disorder;

j. failing to offer a social skills assessment;

j. failing to offer social skills training or interventions; and

k. failing to offer speech or language services?

Student's Proposed Resolutions

Student requests placement at a public, non-public, or private school; compensatory education by a non-public agency of Parent's choice to provide academic remediation and missed services; that Oakland fund private occupational therapy, social skills services, and a private behaviorist to work with Student at home and in school; reimbursement for educational services and related costs of transportation; independent educational evaluations in the areas of academics, cognitive ability, speech and language, occupational therapy, behavior, social-emotional functioning, mental health, assistive technology, and adaptive behavior; that Oakland remove and destroy the educationally-related mental health assessments and all references thereto; that Oakland provide staff training on behavior emergency reports and meetings to notify Parent of restraints, and on the provision of educational records; that Oakland produce all student records and correct incidents of Student's behavior and attendance and all erroneous school records; that Oakland obtain consent prior to conducting assessments of Student, and provide Student a FAPE.

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 only be one document or a short series of related documents per each exhibit tab. Oakland shall include a color copy of the 2016-2017 and 2017-2018 academic calendars applicable to Student, and shall have a witness available to testify as to any legend notations that might be unique to Oakland. 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 present resumes for all witnesses testifying in their professional capacity.

By 12:00 p.m., on Friday, October 6, 2017, Mother shall file with OAH an amended witness list identifying the witnesses she intends to call and a list of all exhibits she intends to use at hearing along with a proof of service showing she has served Oakland's counsel with these lists. The parties shall meet and confer by close of business October 11, 2017, regarding the order of witnesses and the length of testimony anticipated for each witness.

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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates as well as on the issue presented. Each party may request an offer of proof as to the relevance of any witness called to testify.

The parties shall attempt to reach agreement on a witness schedule for the hearing. Oakland shall have witnesses available in case agreement on a witness list is not reached. At the start of the due process hearing, the parties shall present a proposed, joint written witness list for the 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. 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. 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. 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; 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.

Neither party is aware of a need for telephonic testimony. Both parties may file a motion for telephonic testimony should the need arise.

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 may also audio record the hearing, subject to the same requirements.

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, each party bears the burden of proof as to their respective issues. Oakland shall present its case-in-chief, followed by Student.

9. Motions. No pretrial motions are pending or contemplated, aside from a possible need for telephonic testimony. Any other 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 October 2, 2017.

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 and signed by both parties.

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. 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 Open To the Public. At the request of Student, the hearing will be open 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.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: October 2, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings