BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT.	OAH CASE NO. 2014100290 ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE

On October 27, 2014, a telephonic expedited prehearing conference was held before Administrative Law Judge Alexa J. Hohensee, Office of Administrative Hearings. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Stacy L. Inman, Attorney at Law, appeared on behalf of Panama-Buena Vista Union School District. The PHC was recorded.

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

1 Expedited Hearing Dates, Times, and Location. The expedited hearing shall take place on November 4-6, 2014, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The Hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m., except for the first day of hearing, which shall begin at 9:30 a.m..

The hearing shall take place at the District offices located at 3100 Actis Street, Bakersfield, California 93309. 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.

2. Issues. The issues at the expedited due process hearing are listed below.

(1) Is Student entitled to the protections of title 20 United States Code section 1415(k)(5)(A) because District had knowledge that Student was a child with a disability ?

(2) If so, was the conduct that resulted in Student's change of placement on September 11, 2014, a manifestation of, or did it have a direct and substantial relationship to, Student's disability?

The parties are directed to be familiar with 20 United States Code section 1415(k)(5) prior to the start of the hearing.

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 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.

The parties shall meet and confer by telephone at 11:00 a.m. on Monday, October 27, 2014, in order to delete duplicate exhibits from the exhibit binders. Each exhibit shall consist of one document; separate documents may not be combined into one exhibit.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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. Education Code 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

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 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. Student shall disclose in writing the names of all witnesses Student intends to call no later than 5:00 p.m. on October 28, 2014. Education Code 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

The parties are ordered to meet and confer by12:00 p.m. (noon) on Wednesday, October 29, 2014, as to the schedule of witnesses, which may be accomplished by telephone or email. District's counsel shall be familiar by that time with the availability of each witness identified by Student who is a District employee. The parties shall 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. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include a detailed estimate of time for each side's direct, cross, re-direct and re-cross examination.

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 attempt to reach agreement on a witness list for the first day of hearing. 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.

Prior to the commencement of the due process hearing, 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 ALJ has the discretion and authority under Education Code, section 56505.1, subd. (h), to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence. If a party's witness is called first by an opposing party, direct questioning will be completed at the same time as cross-examination.

9. Motions. On October 24, 2014, District filed a motion to limit timelines for Issues #1 and #2, which the ALJ deemed to be addressed to the expedited portion of Student's due process hearing request (complaint) and rendered moot by the clarification of issues during the PHC of October 27, 2014. This ruling does not preclude District from re-filing the motion as to the non-expedited portion of Student's complaint; however, any future motion should be clearly titled to identify that portion of the complaint to which it is addressed.

Any prehearing motion with regard to the expedited portion of Student's complaint filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the PHC of October 27, 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, 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.

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. A Spanish language interpreter is required. 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**,** 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 request for reasonable accommodation is available on OAH's website at:

http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

14. Hearing 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 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 27, 2014

/S/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings