

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA BARBARA SCHOOL DISTRICT.

OAH CASE NO. 2012110048

ORDER FOLLOWING PREHEARING
CONFERENCE

On January 23, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Andrea Marcus, Attorney at Law, appeared on behalf of Student. Mary L. Kellogg, Attorney at Law, appeared on behalf of the Santa Barbara Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on February 11 through 14, 2013, and February 19 through 20, 2013. If the ALJ determines that the hearing can conclude on February 19, 2013, that final day of hearing will be conducted telephonically beginning at 9:30 a.m., at the discretion of the ALJ. Otherwise, the hearing will continue on February 19, 2013 in person and conclude on February 20, 2013. The hearing shall begin each day at 9:00 a.m. with the exception of the first day of hearing and February 19, 2013, on which days it shall begin at 1:30 p.m., unless otherwise ordered. The hearing shall be held at the District's offices located at 720 Santa Barbara Street, Santa Barbara, California 93101.¹ The District has agreed to reserve a parking spot for the ALJ and for Student's counsel. The District shall also ensure a parking spot for Parent.

¹ The District is responsible for ensuring that the room meets OAH specifications. At a minimum, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. A room with one large conference table is not suitable. If a suitable room is not available for any of the hearing days, the District shall immediately notify OAH and the parties and propose a different location. Fresh water and tissue shall be available in the hearing room at all times.

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. Issue and Proposed Resolution. The issue at the due process hearing is listed below:²

*Issue*³: Whether the District’s August 14, 2012 IEP offer failed to meet Student’s mental health and related truancy needs resulting in a denial of a free appropriate public education (FAPE) in that the District:

- a. Failed to offer any goals addressing Student’s truancy;
- b. Failed to offer a behavior support plan that addressed Student’s truancy;
- c. Failed to offer a residential or self-contained placement to support school attendance;
- d. Failed to offer any related services to address truancy;
- e. Failed to offer sufficient counseling services with respect to frequency of the service;
- f. Failed to offer the behavior support of a one-on-one aide or special education services for the entire school day.⁴

² At the request of the ALJ, Student’s counsel clarified his issue to provide greater specificity. The District objected to Student’s clarification of the issue as being beyond that which was encompassed within the original complaint. Student’s complaint very broadly alleged a denial of a free appropriate public education (FAPE) via the District’s August 14, 2012 individualized education program (IEP) offer based upon a failure to meet Student’s mental health and related truancy needs. The District failed to file a notice of insufficiency. This order further delineates and limits Student’s issue and all proposed clarifications come within the four corners of Student’s complaint. The parties may further address the framing of Student’s issue at the commencement of the hearing.

³ Any motion to amend a Due Process Complaint, which was not made by either party in connection with this PHC, or permitted by this Order, shall comply with California Education Code section 56502, subdivision (e). If granted, the filing of an amended complaint would restart the applicable timelines for a due process hearing. (20 U.S.C. § 1415(c)(2)(E)(ii).)

Student's Proposed Resolutions:

- 1) The District be ordered to provide Student by way of compensatory and prospective relief, an appropriate residential placement utilizing one-on-one applied behavior analysis (ABA) based aide support to be faded as Student gains skills to navigate a less structured environment. This one-on-one aide to assist with transition goals which should be developed to include exploring, researching and identifying post-graduation occupations and options for further education, interview and application skills, parenting skills and organizational and calendaring skills.⁵
- 2) The District be ordered to provide supportive counseling twice a week for 45 minutes each session to address depression associated with school.
- 3) OAH find Student to be the prevailing party and award any other appropriate relief.

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, D-1, D-2; S-1, S-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. 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. Exhibit binders shall be exchanged five business days prior to the hearing in accordance with Education Code section 56505, subdivision (e)(7), unless the parties agree to a later date.

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 good cause is shown as to why it was not previously exchanged. The parties shall be prepared to make such an offer of proof.

The District stated its objection to Student's exhibits prepared outside the statutory time frame. The ALJ shall determine whether an exhibit is to be admitted into evidence at

⁴ The District's request to limit Student's issue to the time frame of August 14, 2012 through the date Student filed his complaint, October 31, 2012, is denied. Only evidence relevant to the issues at hearing will be admissible. Parties are expected to address through argument and evidence what impact subsequent IEP offers had on the August 2012 offer.

⁵ Student was advised that he will need to show at hearing how this proposed resolution regarding transition goals is related to the legal issues pled in his complaint.

the time it is introduced at hearing. Only exhibits relevant to the issues previously stated in this order shall be admitted, unless used for impeachment purposes. The fact that an exhibit is placed in an exhibit binder does not guarantee its admission.

4. Witnesses. The District objected to the filing of Student's amended PHC statement on January 23, 2013, as untimely. As of the writing of this Order, the ALJ has not yet received Student's amended PHC statement. While the Student previously filed a PHC statement as did the District, it is helpful to the ALJ to timely receive any amended statements in order to prepare for the PHC. However, Student is still within his five-day disclosure cut-off.

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 District has agreed to make current District employees available to testify. 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, and at the discretion of the ALJ.

The parties are ordered to exchange final lists of witnesses each intends to specifically call by 5:00 p.m. on Friday, February 1, 2013. Additionally, the parties are ordered to meet and confer by noon on February 6, 2013, regarding the order of witnesses and the projected length of testimony 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. Parties shall be prepared to make an offer of proof, if asked, as to why a specific witness's testimony is necessary. The parties are to provide the ALJ with their final witness lists and the order in which they will be called with their projected length of testimony at the start of the hearing.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for the 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 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. In the case of witnesses who have professional licenses and credentials, it is strongly recommended (but not ordered) that the party calling such witnesses be prepared to present copies of their *curriculum vita* (CVs) or resume as exhibits, and timely exchange them with the other party pursuant to Education Code section 56505(e)(7).

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. 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 has identified the need for telephonic testimony.

7. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student shall present his case first followed by the District. If a witness is to be called by more than one party, each party shall ask their questions of the witness so that the witness does not need to return for testimony.

8. Motions. The District moved to exclude the following witnesses listed by Student on the grounds of relevancy: M. Siteren, Kristina Hill, Martha Acevedo, Diana Castro and the "unidentified male counselor" in attendance at the December 2012 IEP. The District requested a ruling in advance of hearing as to whether such witnesses would be allowed to testify as the District would be prejudiced by having to spend time and resources preparing these witnesses for hearing. The District's motion to exclude witnesses is denied. The District is free to renew any objection at the time of hearing. Student should be prepared to provide an offer of proof as to the relevancy of any witness at the time of hearing.

Student sought leave to record the due process hearing for the sole purpose of assisting her with note taking. The District objected. The parties shall be permitted to record the due process hearing with the understanding that the official record of the hearing is the recording made by the ALJ, and the parties shall turn off their recording devices when the ALJ goes "off the record." No disruptions will be allowed to the proceedings by private recordings.

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 January 23, 2013.

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

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. 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.

12. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

13. Hearing Closed To the Public. At the request of the Student, the hearing shall be closed to the public.

14. 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. ON FEBRUARY 8, 2013, 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 and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: January 23, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

