

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100337

ORDER CONTINUING DUE PROCESS
HEARING AND ORDER FOLLOWING
PRE-HEARING CONFERENCE

On February 4, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. Karen Gilyard, Attorney at Law, appeared on behalf of District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing is continued on motion of Student on a showing of good cause and shall take place on February 25-27, 2013, at the District's offices located at 1900 West Olive Avenue, Burbank, CA 91505. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:30 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. The issues at the due process hearing are listed below.

1) Whether District, from January 10, 2006 through December 12, 2012, failed to assess Student in all areas of suspected disability by failing to conduct a Neuropsychological assessment, and social behavioral assessment, and by failing to conduct an adequate functional behavioral assessment?

2) Whether District denied Student a free appropriate public education (FAPE) from January 6, 2009 to December 12, 2012 by failing to design and implement an appropriate behavior support plan (BSP) and failing to offer Student a one-to-one aide?

3) Whether District denied Student a FAPE from January 2010 to December 12, 2012 by failing to draft appropriate measurable goals and objectives in the 2010, 2011, and 2012 individualized educational programs IEP(s)?

4) Whether Student's placement at a residential treatment facility from 2009 to December 12, 2012 was in the least restrictive environment (LRE)?

5) Whether District deprived Parents of meaningful participation in the development of Student's educational program in the 2006-2012 IEPs by predetermining Student's placement?

6) Whether District denied Student a FAPE from May 2, 2011 to December 12, 2012 by failing to hold a six-month reevaluation IEP meeting after his placement in a residential treatment center?

7) Whether District denied Student a FAPE from January 2006 to 2008 by failing to give prior written notice of its discontinuation of special education services?

8) Whether District denied Student a FAPE by failing to convene an IEP in the 2006-2007 and 2007-2008 school years to develop an appropriate program and behavior plan for Student?

9) Whether District denied Student a FAPE for the period including the 2011-2012 school year to December 12, 2012 by failing to implement provisions of the IEP pertaining to Student's treatment plan?

10) Whether District denied Student a FAPE for the period including the 2006-2007 school year to December 12, 2012 by failing to establish adequate counseling goals?

11) Whether District denied Student a FAPE in the 2007-2008 to the 2008-2009 school years by failing to offer Parent and Family counseling and training, and access to accurate information, specialized training, and peer-to-peer community support?

Note: Issues one and seven as written in Student's PHC statement filed on January 14, 2013 are stricken. Issue one has been addressed in the Order Denying District's Motion to Dismiss Portions of the Complaint issued October 23, 2012. Issue seven is dismissed as it does not raise an issue of denial of 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. Each exhibit binder shall contain a detailed table of contents. The parties represent that will timely 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 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.

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.

The parties are ordered to meet and confer by February 22, 2013, as to the schedule of witnesses. The parties are encouraged to review and shorten their witness lists prior to the hearing and work out stipulations as to evidence.

Student has identified nine witnesses to be called at the hearing including an expert, Dr. Delaina Martinez. District has identified 19 witnesses and no experts. District intends to add an additional witness and has been ordered to file a supplemental witness list. Some of the witnesses are listed by both parties. 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 discretion 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. Neither party has requested telephonic testimony. However, 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. Motions. 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 prior to or during the prehearing conference of February 4, 2013.

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

9. Conduct of Counsel and Hearing Room Decorum. District is ordered to provide a room large enough to accommodate the parties, witnesses and the ALJ set up in a courtroom configuration. 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. District has agreed to provide bottled water for the hearing participants.

10. 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.

11. Special Needs and Accommodations. None is required.

12. Hearing Open to the Public. At the request of the parent, the hearing will be open to the public subject to restrictions imposed by the ALJ.

13. 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.

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

IT IS SO ORDERED.

Dated: February 04, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings