

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BURLINGAME ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2012110379

ORDER FOLLOWING PREHEARING
CONFERENCE, VACATING FIRST
DAY OF HEARING, AND
CONTINUANCE OF PREHEARING
CONFERENCE

On February 13, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). David H. Tollner, Attorney at Law, appeared on behalf of Student. Melanie D. Seymour, Attorney at Law, appeared on behalf of Burlingame Elementary School District (District). The PHC was recorded.

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

1. Continuance of the PHC. The parties represented that the case is in the process of settling and that the parties expect to reach a signed settlement agreement by the commencement of hearing. The parties requested a continuance of the PHC to permit consummation of the settlement agreement. Based on discussion of the parties, the ALJ issues the following order:

a) The hearing date of February 19, 2013, is vacated and the PHC is trialed to Tuesday, February 19, 2013, at 1:30 p.m.

b) It is expected that the party requesting the hearing will immediately file a written withdrawal of the complaint with OAH upon execution of the settlement agreement.

c) All other dates shall remain on calendar and will not be vacated until timely notice of settlement and request for withdrawal of the complaint is filed by Student. If the parties do not settle this matter, the hearing shall take place on February 20 – 22 and 25, 2013. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for February 20, 2013, when the hearing shall begin at 9:30 a.m. and February 25, 2013, when the hearing shall begin at 1:30 p.m., unless otherwise ordered.

d) 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. Timely Disclosure of Exhibits. The parties’ request to delay disclosure of exhibits until 5:00 p.m. on February 15, 2013, is granted as the parties established good cause to delay disclosure. 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.

3. 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 15, 2013, as to the schedule of witnesses, and will agree to 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. At the PHC on February 19, 2013, each party shall be ready to discuss the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence. 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. 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.

4. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE

REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: February 14, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings