

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013060472

ORDER FOLLOWING PREHEARING
CONFERENCE

On October 28, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Rebecca Freie, Office of Administrative Hearings (OAH). Brett Smith Allen, Attorney at Law, appeared on behalf of Student.. Lenore Silverman, Attorney at Law, appeared on behalf of the Oakland 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 at the Office of Administrative Hearings, Room 206, 1515 Clay Street, Oakland, California 94612. It shall take place on November 5, 6, and 7, 2013, and continuing day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. ¹ On November 5, 2013, the hearing shall begin at 9:30 a.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., 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.

A. Did the District deny Student a free appropriate public education (FAPE) from June 2011 to the present by failing to assess him in all areas of suspected disability,

¹ There was also discussion about the hearing being held on November 8, 2013, but no final determination was made on that date. That will be discussed on the first day of hearing.

specifically in the areas of behavior, speech and language, and assistive technology (AT) and/or augmentative or alternative communications (AAC)?

B. Did the District deny Student a FAPE from June 2011 to the present by failing to tailor an appropriate educational program to meet his unique needs, specifically by:

1. Failing to provide a one-to-one aide to help him with transitions, behavior, social skills, and language;
2. Failing to provide an Extended School Year; and
3. Failing to provide placement and services to meet Student's unique needs, and provide him with educational benefit for the 2013-2014 school year?

C. Did the District deny Student a FAPE by failing to provide Parent with a full and complete copy of Student's educational records in response to their request of May 3, 2013?

D. Did the District deny Student a FAPE in the 2012-2013 and/or 2013-2014 school years by failing to provide parent with prior written notice regarding its refusal to convene an individualized education program (IEP) team meeting after Parent's April 2013 request?

As resolutions, Student requests that OAH order the District (1) to fund independent educational evaluations (IEE's) in all areas of suspected disability; (2) to provide compensatory education as identified in the IEE's; (3) to provide to Parents all of Student's school records; (4) to fund Student's placement in an NPS; (5) to fund any and all assistive technology and augmentative or alternative communications devices recommended in the IEE's, and (6) to reimburse Parents for all educationally related expenses.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on October 29, 2013, 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. Inclusion of an exhibit in an evidence binder does not guarantee that it will be admitted.

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.

a) Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party.² The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) Student has identified nine witnesses to be called at the hearing, and the District has identified 16 witnesses. Some of the witnesses are listed by both parties. In light of the fact that three days have been scheduled for the hearing, examination of the number of witnesses proposed would make it difficult to complete the hearing as scheduled. Therefore, the parties shall meet and confer no later than close of business October 30, 2013, to discuss and arrange a witness schedule. Prior to the commencement of the due process 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. The parties should be prepared to discuss the witnesses who will be called the following day of hearing at the conclusion of each day's testimony. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for their 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

6. Telephonic Testimony. At present no party intends to present a witness by telephone. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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.

² The District announced during the PHC that the following witnesses on its list are no longer employed by the District: Kim McSorely, Pamela Osnes, and Julie McCalmont. Olivia Flores-Bexineau, a witness on Student's list is on medical leave and unable to testify, even telephonically.

7. Electronic Recording of Hearing. Both parties indicated that they wanted to record the hearing, and that request was granted. Recording shall be permitted only on the 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.

8. Motions. Student indicated that he might be filing a motion to amend his complaint within the next few days.³ At present no other prehearing motions are pending or contemplated. Any motion, other than a motion to amend, 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 this prehearing conference.

9. 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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 during the hearing unless permission to the contrary is obtained from the ALJ.

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

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

14. 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 days or fewer than five days 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. IF A FULL AND FINAL SETTLEMENT 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-

³ The motion to amend was filed on October 29, 2013, and will be ruled upon in another order.

6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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.

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

IT IS SO ORDERED.

Dated: October 31, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings