

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013071141

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 8, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Margaret Broussard, Office of Administrative Hearings (OAH). LaJoyce Porter, Attorney at Law, appeared on behalf of Student. Shawn Olson-Brown, Attorney at Law, appeared on behalf of the West Contra Costa Unified School District (District). The PHC was recorded.

The following orders are issued:

1. Hearing Dates, Times, and Location: The hearing shall take place on **November 19-22 and 26, 2013.**¹ Unless otherwise ordered, the hearing shall begin at **9:30 a.m.** on November 19, 2013, and at **9:00 a.m.** on all other days. **The hearing shall be held at West Contra Costa Unified School District Office, 2465 Dolan Way, West Contra Costa, CA 94806.**

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. 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 without the need for a subpoena. The District agreed to make District employees called as witnesses by Parent available without the need for subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable.

¹ OAH does not generally schedule hearings on Fridays. However, in this case the ALJ currently assigned to hear this case has agreed to hear the case on Friday, November 22, 2013. If another ALJ is assigned to hear the case, that ALJ will determine whether the hearing will go forward on November 22, 2013 or be continued to the next week

3. Issues: The issues for hearing are limited to those alleged in Student's complaint.² The issues were discussed during the PHC and are reframed and clarified below.

I. Did the District deny Student a free appropriate public education (FAPE) during the 2011-2012 school year by:

- a. failing to provide an appropriate placement;
- b. failing to provide speech and language therapy;
- c. failing to provide occupational therapy;
- d. failing to provide mental health services; and
- e. failing to provide appropriate services for Student to obtain English language proficiency?

II. Did the District commit the following procedural violations which denied Student a FAPE for the 2011-2012 school year:

- a. failing to provide an educationally related mental health services (ERMHS) assessment plan, within 15 days of the parent's request at the October 27, 2011 individualized education program (IEP) team meeting;
- b. failing to perform an ERMHS assessment within 75 days of the October 27, 2011 IEP team meeting;
- c. failing to provide an independent educational evaluation (IEE) or file for a due process hearing in response to Student's March 13, 2012 request for an IEE; and
- d. failing to provide prior written notice when the District refused to provide home hospital instruction, the requested ERMHS assessment, mental health services, implement the February 15, 2012 IEP, and provide the home instruction services in June 2012?

III. Did the District deny Student a FAPE during the 2012-2013 school year by:

- a. failing to provide an appropriate placement; and
- b. failing to provide speech and language therapy; and
- c. failing to provide occupational therapy; and
- d. failing to provide mental health services; and
- e. failing to provide appropriate services for Student to obtain English language proficiency?

² The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues have been reworded and reordered to ensure clarity.

IV. Did the District commit a procedural violation which denied Student a FAPE in the 2012-2013 school year when it failed to provide prior written notice of its refusal to provide Student with any placement and services?

4. Proposed Resolutions: The Student has proposed the following resolutions:

I. The District shall fund an IEE with Dr. Sandra Ciao, including an observation of Student, and Dr. Ciao's appearance at an IEP team meeting in the amount of \$10,300.00.

II. The District shall fund an IEE with Speech Pathology Group.

III. The District shall fund an ERMHS assessment with Diana Santas at U.C. Berkeley.

IV. The District shall fund Student's placement at Bayhill, a non-public school, with extended school year services, from the beginning of the 2013-2014 school year through Student's graduation from high school.

V. The District shall provide related services for Student while at Bayhill, including, but not limited to: three hours per week of bilingual tutoring, one hour of individual therapy per week, three sessions of 30 minutes each of speech and language therapy per week, one hour of social skills therapy per week and 45 minutes of occupational therapy per week, all through non-public agencies.

VI. The District shall fund an educational trust for Student for compensatory services for educational therapy, speech and language and transition services in an amount no less than 1000 hours.

VII. The District shall reimburse for a Google Chromebook, required for Student at Bayhill.

VII. The District shall reimburse for transportation to and from Bayhill, in an amount equal to two round trips per school day.

5. Exhibits: Exhibits shall be pre-marked by each party and placed in a three-ring exhibit binder prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs. Each exhibit binder shall contain a detailed table of contents or list of the documents it contains. Student's exhibit list shall identify each exhibit by number and the designation "S" (e.g., S1), and the District's exhibit list shall identify each exhibit by number along with a "D" (e.g., D1). Any document over five pages in length shall be internally paginated, or all pages in the binder shall be Bates-stamped or consecutively paginated. Each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing.

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the

witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible

6. Witnesses: Neither party shall be permitted to call any witnesses not disclosed under Education Code section 56505, subdivision (e)(7), or in the PHC, except for good cause shown, supported by declaration under penalty of perjury, and at the discretion of the ALJ.

Prior to the due process hearing, the parties shall meet and confer informally to discuss their witnesses and arrange a witness schedule. At the commencement of the hearing, the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. 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. The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary, cumulative, or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

All objections as to the relevance of the witnesses' testimony are reserved for hearing.

7. 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).) Student's motion for Dr. Ciao to appear telephonically was granted. Student must ensure that Dr. Ciao has a copy of both Student's and the District's evidence binder at her disposal at the time of her testimony. The District shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

8. Order of Presentation of Evidence: The Student shall produce its evidence first. Where the Student and District intend to call the same witness to testify, the second party questioning the witness may ask questions that they would have asked on direct examination so the witness will only need to be called to the witness stand once. 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 unless otherwise ordered.

9. Closed Hearing: The Student has requested a closed hearing.

10. Motions: 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 this PHC.

11. Special Needs and Accommodations: A Spanish interpreter will be needed for the entire hearing. OAH will provide the interpreter.

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

13. Settlement: The parties are encouraged to negotiate to reach a settlement 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 during business hours 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. OAH will check for messages the evening prior to the hearing and the morning of the hearing. If the settlement agreement has been executed but is subject to approval of the school board, the parties may file a motion for OAH to vacate the prehearing conference and hearing dates and set a telephonic status conference for a date following board approval.

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

IT IS SO ORDERED.

Dated: November 08, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings

