

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014031066
v.	
BAKERSFIELD CITY SCHOOL DISTRICT,	
BAKERSFIELD CITY SCHOOL DISTRICT,	OAH CASE NO. 2014050352
v.	ORDER FOLLOWING PRE-HEARING CONFERENCE AND CONTINUING HEARING
PARENT ON BEHALF OF STUDENT.	

On May 16, 2014, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH) in the consolidated OAH cases numbered 2014031066 (Student's Case) and 2014050352 (District's Case).

Lindsay Vose, Esq. appeared on behalf of Student. Sarah W. Sutherland, Esq., appeared on behalf of Bakersfield City School District (District). The PHC was recorded.

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

1. Continued Hearing Dates, Times, and Location. At the commencement of the PHC, the parties and ALJ discussed a conflict between the hearing dates in this matter and in another case in which District counsel is presently scheduled for hearing on May 28 and 29, 2014. The parties jointly requested that hearing of this matter be continued to commence on June 2, 2014 to avoid the conflict in hearing dates and to permit this matter to be heard in four contiguous days of hearing, instead of commencing on May 21 and 22, 2014, and finishing on June 2 and 3, 2014. The parties also requested the continuance to allow time to complete ongoing settlement discussions. A due process hearing must be held, and a decision rendered, within 45 days of receipt of the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).) Here, good cause was shown for a continuance to commence the hearing on a date which otherwise would have been the third hearing day, so that the hearing may be held in four contiguous days, avoiding a 10-day gap in hearing days. Student's Case was filed recently on March 27, 2014, and District's Case was filed on May 6, 2014, and the parties have not previously requested any continuances of the hearing date.

The hearing is to take place at Bakersfield City School District, 714 Williams Street, Bakersfield, CA 93305, commencing on June 2, 2014, from 1:30pm .m. to 4:30 p.m., and June 3, 4 and 5 from 9 a.m. to 4:30 p.m., and continuing day to day, Monday through Thursday, 9:00 a.m. to 4:30 p.m., and as needed at the discretion of the Administrative Law Judge.

The parties will immediately notify all potential witnesses of the hearing dates, and will 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. Student's Issues. The issues to be resolved in Student's Case at the due process hearing, as alleged in Student's complaint and clarified by the parties and the ALJ at the PHC, are whether District denied Student a free appropriate public education (FAPE) from March 27, 2012 to March 27, 2014:

- A. By failing to adequately assess Student in all areas of suspected disability, in particular:
 - 1. By failing to conduct an appropriate psycho-educational evaluation;
 - 2. By failing to conduct a timely behavior assessment before transitioning Student to a new behavior provider;
 - 3. By failing to appropriately conduct Student's speech and language assessment dated November 8, 2012;
 - 4. By failing to conduct a timely pragmatic speech assessment of Student; and
 - 5. By failing to conduct an assistive technology assessment of Student;
- B. By placing Student in a special day class for the majority of his school day which was not the least restrictive environment for Student.
- C. By failing to offer Student adequate services in the 2012 - 2013 and 2013 - 2014 school years, in particular:
 - 1. Speech services;
 - 2. Social skills training;
 - 3. Assistive technology devices;

4. Augmentative and alternative communication; and
 5. Applied behavioral analysis behavioral intervention from a non-public agency.
- D. By failing to accurately state Student's present levels of performance in Student's IEPs dated December 4, 2012 and December 3, 2013.
- E. By failing to set forth appropriate and measurable annual goals in Student's IEPs dated December 4, 2012 and December 3, 2013.
- F. By impeding Parent's right to participate in the IEP process by:
1. Predetermining District's offer of placement and services in Student's IEPs dated December 4, 2012 and December 3, 2013, and at an IEP team meeting on December 19, 2013;
 2. Failing to provide Parents proposed goals and other information requested by Parents, prior to IEP team meetings held on December 4, 2012, December 3, 2013, and December 19, 2013;
 3. Failing to consider Parent's concerns with respect to Student's goals and services at IEP team meetings held on December 4, 2012, December 3, 2013, and December 19, 2013;
 4. Failing to accurately document Parent's concerns regarding Student's goals and services in Student's IEPs dated December 4, 2012, and December 3, 2013.
- G. By failing to provide prior written notice in connection with its refusals of Parent's requests for: (i) more intensive pragmatic speech services; (ii) information concerning Student's speech provider; (iii) placement of Student in an environment with more mainstreaming; and (iv) social skills training.

3. District's Issue. Whether District's offer in Student's December 3, 2013 IEP to provide Student intensive individual services (IIS) through highly qualified and trained District staff constituted a FAPE.

4. Exhibits. [Student 58, District 74.] Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the

ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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. Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment are expected to be subjects of direct examination. Any resumes not previously exchanged will be delivered to the other party by 12:30 p.m. on May 27, 2014.

5. Witnesses. Student has identified 25 percipient witnesses, and 1 expert witnesses, that Student intends to present at hearing. District has identified 17 percipient witnesses and 1 expert witness. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. The District will also inform Student of the identity of, and available contact information for, any witness identified by Student as an employee of the District who has left the District's employ, by 12:30 p.m. on May 27, 2014. The parties will 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.

6. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties represented that they had exchanged final witness lists and exhibit binders by 5:00 p.m. on Wednesday, May 14, 2014. Witnesses and documents not disclosed on or before Wednesday, May 14, 2014 may be excluded at the request of the other party from introduction at the hearing, except for witness resumes which are to be exchanged by no later than May 27, 2014 at 12:30 p.m.

Each party reserves the right to present additional witness and documents for purposes of rebuttal.

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). 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.

8. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer on Tuesday, May 27, 2014 at 12:30 p.m. regarding the schedule of witnesses and possible stipulations that might reduce or eliminate the need to present certain witnesses or documents. Student will place the telephone call to initiate the meet and confer. The parties shall 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. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

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 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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.

10. Motions. The parties do not anticipate bringing any motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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 PHC.

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

12. 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.

13. Special Needs and Accommodations. None.

14. Hearing Closed To the Public. The hearing will be closed to the public.

15. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

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

IT IS SO ORDERED.

DATE: May 19, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings