

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030365

ORDER FOLLOWING PREHEARING
CONFERENCE

On May 23, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Margaret M. Broussard, Office of Administrative Hearings. Mother appeared on behalf of Student. Daniel Osher, Attorney at Law, appeared on behalf of the Sacramento City Unified School District (Sacramento). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at **The Office of Administrative Hearings – Sacramento Office, 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833.** It shall take place on June 3, 2014, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On June 3, 2014, the hearing shall begin at 9:30 a.m., and on any other scheduled 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. Issue and Proposed Resolutions. The issue below was discussed at the PHC and reworded for clarity:

Did Sacramento deny Student a free appropriate public education (FAPE) by failing to schedule a follow-up individualized education program team meeting pursuant to Parent's February 24, 2014 request?

Proposed Resolutions

- a. Student has asked for the following to be awarded:
- 1) Two years of tutoring for two hours per week in the amount of \$6,000 per year;
 - 2) Cost of a tutor for school missed from February 2014 forward in the amount of \$12,000;
 - 3) School tuition for two years in the amount of \$7,500 per year;
 - 4) summer school for two years in the amount of \$1,500.00 per year;
 - 5) transportation to private school in the amount of \$1,500 per year for two years;
 - 6) wear and tear on private transportation in the amount of \$1,000 per year for two years;
 - 7) court costs of \$120;
 - 8) harassment in the amount of \$3,000;
 - 9) annoyance in the amount of \$3,000; and
 - 10) a check cashing fee in the amount of 2% of the total amount awarded.

3. Exhibits. Exhibits shall be pre-marked and placed three-ring exhibit binders prior to the hearing. The parties shall use a joint evidence binder which will be prepared by the attorney for Sacramento with both Sacramento's nineteen exhibits and Student's four exhibits, as listed in Sacramento's prehearing conference statement dated May 20, 2014. Sacramento shall use numbers to identify exhibits. Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. As Sacramento already has Student's exhibits and is including them in its exhibit binder, Sacramento shall serve an exhibit binder containing both parties exhibits on Student in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, Sacramento 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 a 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. 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, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) Student has identified four witnesses to be called at hearing: Mother, Stephan Brown, Rebecca Bryant and Lisa Friend. Sacramento has identified four witnesses to be called at the hearing: Rebecca Bryant, Lisa Friend, Maria Vanlaningham and Mother. **Sacramento will schedule a set time for Mr. Brown to arrive at the hearing to testify and will notify Student of the scheduled time no later than May 30, 2014.** 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 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. 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. Sacramento asked that Mr. Brown be allowed to testify telephonically. Student opposed the request. The request was not granted because Mr. Brown is able to appear in person.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, neither party intends to make an audio recording of the hearing. The following conditions apply to any recording: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. At this time, no prehearing motions are pending or contemplated. Any motion 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 and 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 or set to vibrate 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 any special accommodation for any witness or party.

13. Hearing Open To the Public. The hearing will be open 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 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.

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.

DATE: May 23, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings