

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT.

OAH CASE NO. 2014050188

ORDER FOLLOWING PRE-HEARING
CONFERENCE

On July 28, 2014, Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH), held a telephonic prehearing conference (PHC). The date of the PHC was set pursuant to a joint request for continuance by the parties on June 11, 2014. Attorney Pamela Townsend appeared on District's behalf. Student's attorney Nicole Hodge Amey failed to appear. The ALJ made two telephonic attempts to reach Ms. Hodge Amey and left voicemail messages on both occasions. Ms. Hodge Amey's telephonic recording stated that she was unavailable by telephone on the date of the PHC. During a short break in the PHC, District's counsel emailed Ms. Hodge Amey to request that she make herself available for the PHC. Ms. Hodge Amey did not respond to these attempts to contact her.

Accordingly, the PHC proceeded in Ms. Hodge Amey's absence. The PHC was recorded. Based on discussion of the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place on August 5, 6 and 7, 2014, and continuing day to day Monday through Thursday as needed at the discretion of the hearing ALJ. The hearing shall begin at 9:30 a.m. on August 5, 2014, and at 9:00 a.m. on August 6 and 7, 2014, unless otherwise ordered. The hearing shall take place at the District's offices located at 714 Williams Street, Bakersfield, California 93305.

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. The issues at the due process hearing are listed below.

a) Did District procedurally and substantively deny Student a free appropriate public education from and after August 9, 2013 by:

- 1) Failing to assess Student in the areas of occupational therapy, behavior and hearing;
- 2) Failing to design appropriate goals to address Student's unique needs;
- 3) Failing to provide Student with a trained behavioral aide;
- 4) Failing to consider a continuum of placement options at Student's individualized education program (IEP) team meetings;
- 5) Predetermining Student's placement;
- 6) Offering Student an inappropriate placement;
- 7) Failing to implement Student's IEP;
- 8) Failing to modify Student's behavior goals based on Student's actual performance and ability; and
- 9) Denying parents the opportunity to meaningfully participate in the development of Student's IEP?

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, but shall place the letter "S" or "D" in front of the exhibit to designate if it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2). 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, including the date and title of the document. Dated documents shall be separately marked and not combined with other documents. 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 shall meet and confer telephonically on August 1, 2014 at 10:00 a.m. to discuss exhibits, and shall make good faith efforts to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties shall not serve exhibits on OAH prior to the hearing.

The parties shall exchange a resume or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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. 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 PHC 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 on August 1, 2014 at 10:00 a.m. as to the schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule for all hearing days which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. The District shall have witnesses available in case agreement on a witness list is not reached. 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 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.

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.

6. 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.

District reserved its right to request telephonic hearing on the first day of hearing if needed.

7. Motions. At present no prehearing motions are pending or contemplated, except for the District's pending motion concerning attorneys' fees. Any prehearing 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 the PHC of July 28, 2014.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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. No one in the hearing room shall engage in text messaging while the hearing is on the record.

10. 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 must provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Special Needs and Accommodations. Neither party identified the need for special accommodation for any witness or party, or for interpreter services in their PHC statements.

12. Hearing Closed To the Public.

13. Settlement. The parties are encouraged to continue working together 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. In addition, 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. THE PARTIES SHOULD 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 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. 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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a written request for a status conference based upon settlement subject to board approval, and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

Unless the documents required above have been filed with OAH before the close of business on Friday, August 1, 2014, Student's attorney shall notify OAH telephonically if the matter has settled by speaking in person to a staff member no later than noon on Monday, August 4, 2014. If no such notification is made, the parties are ordered to appear for hearing as scheduled. Student's failure to appear for hearing shall be grounds for issuance of an Order to Show Cause re: Sanctions or Dismissal against both Student and Student's counsel.

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

IT IS SO ORDERED.

DATE: July 28, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings