

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VACAVILLE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014060605

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 28, 2014, Administrative Law Judge Joy Redmon, Office of Administrative Hearings, conducted a pre-hearing telephone conference. Attorney Richard Ruderman appeared on Student's behalf. Attorney Van T. Vu appeared on Vacaville Unified School District's (Vacaville's) behalf. The prehearing conference (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 Vacaville's offices located at **401 Nut Tree Road, Vacaville, CA 95688**. It shall begin on August 5, 2014, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On August 5, 2014, 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.¹

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure witness availability to testify. Good cause will not be established for witness unavailability if he or she is not properly notified or subpoenaed, as applicable.

2. Issue and Proposed Resolutions. The issue below was discussed at the PHC and reworded for clarity:

¹ The hearing room shall have separate tables set up in a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall provide water and have tissue available for all parties, witnesses, and the ALJ. District shall also ensure that the hearing room and other facilities used during the hearing are accessible.

ISSUE 1: Did Vacaville deny Student a free appropriate public education during the 2013-2014 school year and extended school year by failing to:

- a. Convene an IEP team meeting when Student's NPA speech and language therapist terminated services on approximately May 23, 2014;
- b. Offer and provide appropriate speech and language therapy services, specifically failing to offer consultation services by a provider with expertise in the speech disorder cluttering and failing to provide services by a person with knowledge and expertise working with a Student diagnosed with cluttering;
- c. Make a clear offer for the 2014 extended school year;
- d. Offer an appropriate program for the 2014 extended school year that included typically developing peers for more social skill building opportunities; and
- e. Implement Student's speech and language therapy services pursuant to his IEP from approximately May 23, 2014, forward?

ISSUE 2: Did Vacaville deny Student a free appropriate public education for the 2014-2015 school year by failing to offer appropriate speech and language therapy services, specifically by failing to offer consultation services by a provider with expertise in the speech disorder cluttering and failing to provide services by a person with knowledge and expertise working with a Student who has a cluttering disorder?

Proposed Resolution

1. An order that Vacaville denied Student a FAPE for the 2013-2014 school year including ESY;
2. An Order that Vacaville denied Student a FAPE by failing to offer him a FAPE for the 2014-2015 school year;
3. Reimburse Parents for the private speech and language therapy services they obtained during the 2013-2014 school year, including ESY;
4. Reimburse Parents for transportation services for private speech and language therapy services;
5. Vacaville shall convene an IEP team meeting and offer speech and language therapy services by a provider who can address both his language and speech disorders. The therapist shall have specific knowledge, training, and experience to address a cluttering

disorder. Alternatively, Vacaville shall offer one provider to address Student's language disorder and one to address his speech disorder.

6. Reimburse Parents for City of Vacaville's summer camp program;
7. Reimburse Parents for transportation to ESY program; and
8. Other relief unknown to Student that is deemed appropriate by the ALJ.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits to clarify the offering party (such as "S1" or "D2"). Each exhibit shall be internally paginated, by exhibit, or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. Each party shall serve its exhibit binder on the other party in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply two exhibit binders containing its exhibits for the ALJ and 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 unless supported by a written declaration under penalty of perjury, and the ALJ admits it.

4. Witnesses.

a) Each party is responsible for procuring its own witnesses' attendance. Each party shall make witnesses under its control reasonably available to the other party. The parties shall schedule witnesses to avoid delays and to facilitate witnesses being called only once. Parties may only call any witnesses disclosed in their prehearing conference statement, unless good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) Student identified 32 percipient and 2 expert witnesses for hearing. Vacaville identified 11 witnesses for hearing. The parties are ordered to meet and confer develop a proposed witness schedule and provide it to the ALJ at the hearing. The ALJ will finalize the proposed witness list with the parties at that time. The ALJ has discretion to limit the number and time allowed for witness testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party is limited to examining the witness to those matters raised in the immediately preceding examination. The parties shall establish their cases in chief during the first appearance of a witness so that each witness need only appear once.

6. Telephonic Testimony. A party requesting telephonic witness testimony 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. Neither party requested telephonic testimony.

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. During the PHC, both Student and Vacaville indicated that each was made aware within the last business day that a necessary witness on each side may not be available for hearing. At this time there is no current motion to continue pending; however, the parties put the ALJ on notice that a motion to continue may be forthcoming due to witness unavailability. The parties do not contemplate other motions at this time. Except for a motion to continue based upon the reasons cited above, 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 expense reimbursement shall present admissible evidence, or a stipulation to the expense amount, 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 writing.

11. Conduct 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 the ALJ grants permission otherwise.

12. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party. Vacaville shall ensure that all facilities used during the hearing comply with the Americans with Disabilities Act.

13. Hearing Closed To the Public. The hearing will be closed to the public. Student may notify the ALJ during the hearing if he requests the hearing be open to the public.

14. Settlement. The parties are encouraged to continue 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 fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH 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 withdrawal letter, or 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 otherwise arranged with 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 excluding evidence or other sanctions.

IT IS SO ORDERED.

DATE: July 28, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings