

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT, KERN COUNTY
SUPERINTENDENT OF SCHOOLS, AND
GREENFIELD UNION SCHOOL
DISTRICT.

OAH CASE NO. 2014040234

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 4, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Marian H. Tully, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Attorney at Law, represented Student. Sarah L. W. Sutherland, Attorney at Law, represented Bakersfield City School District (Bakersfield). Stacy L. Inman, Attorney at Law, represented Greenfield Union School District (Greenfield) and Kern County Superintendent of Schools (Superintendent). 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 12 through 14, 2014, at the District's offices located at 1624 Fairview Road, Bakersfield, California 93307. If, for any reason, this location is not available on the days scheduled, and respondents are unable to provide another suitable location reasonably convenient to Student, Bakersfield shall so notify OAH by 5 p.m., August 7, 2014, and OAH will make best efforts to set the hearing at a location within Kern County. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days 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. Issues. The parties and the ALJ discussed the issues arising out of Student's complaint and previous orders concerning the issues presented in this matter. The issues at the due process hearing are listed below. All other issues were waived.

a) Did Bakersfield deny Student a free appropriate public education (FAPE) from May 30, 2013, by failing to timely conduct an occupational therapy assessment?

b) Did Bakersfield deny Student's parent the right to meaningfully participate in the educational decision making process by failing to translate Student's individualized education programs from English to Spanish?

c) Did Greenfield and Superintendent deny Student a FAPE from March 31, 2014, by failing to provide Student a one-to-one aide?

d) Did Greenfield and Superintendent deny Student's parents the right to meaningfully participate in educational decision making by unilaterally changing Student's placement without prior written notice and without offering transportation for Student?

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," "B," or "GS" in front of the exhibit to designate if it is a Student, Bakersfield or Greenfield/Superintendent exhibit. 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. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). 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 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 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. Bakersfield has agreed to make Jeff Board, and Jodi Gonzalez available. Bakersfield provided the last known address for Annie Alcanta and Wendi Wanner for use in obtaining these witnesses by subpoena. Greenfield agreed to produce Julianna Gaines and Kimberley Shipp. 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 prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

The parties have agreed to meet and confer by telephone by 5:00 p.m., August 7, 2014 as to the schedule of witnesses. The witness schedule will be finalized at the commencement of the due process hearing. 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 shall exchange, and provide the ALJ a copy, of resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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. If a witness is to be called by more than one party, the party first conducting cross-examination of that witness shall include in that examination all questions intended for the witness on direct examination, in order that each witness need appear and testify only once.

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; shall arrange for the testimony to be taken in a private location with no other persons present, and 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. Cellular telephones may not be used for telephonic testimony. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Timely Disclosure of Witnesses/Exhibits. The parties have timely disclosed witnesses and exhibits as required by Education Code section 56505, subdivision (e)(7).

8. Order of Presentation of Evidence. As petitioner, Student will proceed first.

9. Motions. At present Bakersfield and Greenfield/Superintendent each intend to file motions in limine as to the "timeline" for Student's issues and the admissibility of a settlement agreement. 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 prehearing conference of August 4, 2014.

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. 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. A Spanish language interpreter is required. At present no party anticipates the need for any other special accommodation for any witness or party.

14. Hearing Closed To the Public.

15. 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 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. 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 request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: August 04, 2014

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings