

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040312

ORDER FOLLOWING PREHEARING
CONFERENCE

On August 18, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney Nicole Jamison appeared on Student's behalf. Attorney Maria Gless appeared on Elk Grove Unified School District's (Elk Grove's) behalf. Attorney Cathy Holmes who also represents Elk Grove listened to the PHC. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at 9510 Elk Grove Florin Road, Elk Grove, California 95624, in a room to be provided Elk Grove.¹ It shall commence on August 27, 2014, from 9:30 AM through 5:00 PM. The hearing will also be conducted on August 28, 2014, from 9:00 AM until 5:00 PM, September 2, 2014, from 1:30 PM until 5:00 PM and September 3 and 4, 2014, from 9:00 AM to 5:00 PM, 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.

¹ At a minimum, the hearing room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for Elk Grove's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. Elk Grove shall ensure that the hearing room and other facilities that will be used during the hearing comply with the accessibility requirements of the Americans with Disabilities Act.

2. Issues and Proposed Resolutions.

ISSUE 1. Did Elk Grove deny Student a free appropriate public education in the 2013-2014 school year, by failing to conduct legally compliant assessments in the following areas:

- a. Psycho-educational and academic achievement;
- b. Physical therapy; and
- c. Functional vision, including assessing learning media and orientation and mobility?

ISSUE 2. Did Elk Grove deny Student a FAPE during the 2013-2014 school year by preventing Parent from meaningfully participating in Student's educational decision-making process or denying Student an educational benefit by:

- a. Failing to maintain accurate educational records;
- b. Failing to invite all required participants to IEP team meetings conducted on October 30, 2013, and February 13, 2014, specifically a representative from California Children's Services; and
- c. Predetermining Student's placement prior to the IEP team meeting conducted on February 13, 2014?

ISSUE 3. Did Elk Grove deny Student a FAPE during the 2013-2014 school year, including the extended school year by failing to offer:

- a. Adequate physical therapy services;
- b. Adequate occupational therapy services;
- c. Adequate speech and language services;
- d. Measurable goals;
- e. Goals addressing Student's sensory integration and gross motor needs;
- f. Appropriate accommodations, modifications, and supports specifically to address Student's safety in the classroom and on the playground;
- g. An appropriate educational placement in the least restrictive environment, specifically a general education preschool classroom;

- h. Extended school year services; and
- i. A one-to-one aide?

Proposed Resolutions:

- a. A determination that Student was denied a FAPE for the 2013-2014 school year.
- b. A determination that Elk Grove failed to adequately assess Student in areas of suspected disability.
- c. Elk Grove shall reimburse Parents or be ordered to conduct independent educational assessments in all areas of need including:
 - i. Psycho-educational and academic achievement;
 - ii. Physical therapy; and
 - iii. Functional vision, learning media, and orientation and mobility.
- d. Elk Grove shall convene and IEP team meeting to review the results of the independent assessments and fund the assessors' attendance at the meeting. Appropriate goals will be developed in all areas of need.
- e. Elk Grove shall provide compensatory education including individual tutoring, speech and language therapy, physical therapy, and occupational therapy subject to proof at hearing.
- f. Elk Grove shall reimburse parents for educational costs including tuition, tutoring, speech and language therapy, occupational therapy, and physical therapy.

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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party, 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.

a) Each party is responsible for procuring its own witnesses for hearing. 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 and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) Student and Elk Grove collectively identified more than 30 witnesses for hearing. Some of the witnesses are listed by both parties. In light of the fact that five days have been scheduled for the hearing, examining all proposed witnesses would make it difficult to complete the hearing as scheduled. Therefore, the parties are ordered to meet and confer to develop a tentative witness list, identifying the witnesses the party intends to call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. The proposed witness list shall contain a time estimate each witness's direct examination testimony. Prior to commencing the due process hearing, the ALJ and the parties will discuss the tentative witness list, 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 and Order 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. Presently neither party has made a specific request for 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.

7. Electronic Recording of Hearing.

a. Audio Recording. At present both parties intend audio record the hearing. The requests were granted on the conditions 1) that OAH's recording is the only

official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that 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 present 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. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

10. 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 permission to the contrary is obtained from the ALJ.

11. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for the services of an interpreter.

12. Hearing Closed To the Public. At the request of Parents, the hearing will be open to the public.

13. 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 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.

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

IT IS SO ORDERED.

DATE: August 18, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings