

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014061124

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 3, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Student. David Mishook, Attorney at Law, appeared on behalf of Oakland. 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 **Office of Administrative Hearings Oakland Office, 1515 Clay Street, Suite 206, Oakland, CA 94612**. It shall take place on November 12, 13, 17 and 18, 2014, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On November 12 and 17, 2014, the hearing shall begin at 1:30 p.m. and end at 5:00 p.m., and on remaining days, the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., unless otherwise ordered.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability. .

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reworded for clarity:

ISSUE 1: Did Oakland's psycho-educational assessment, discussed at the June 2012 individualized education program team meeting, meet all legal requirements?

ISSUE 2: From June 20, 2012 to the present, did Oakland fail to perform the following assessments:

a). neuropsychological;

- b). functional behavior;
- c). social skills;
- d). assistive technology;
- e). augmentative and alternative communication;
- f). occupational therapy; and
- g). physical therapy?

ISSUE 3: In the June 2013 IEP, did Oakland deny Student a free appropriate public education by developing goals contained in the IEP that

- a). did not have baselines;
- b). were not measureable; and
- c). did not take into account Student's health issues?

ISSUE 4: From June 2012 until October 2013, did Oakland deny Student a FAPE by offering Student placement in a special day class?

ISSUE 5: From October 2013 to the present, did Oakland deny Student a FAPE by failing to implement Student's IEP placement, specifically home hospital instruction and related services?

ISSUE 6: From June 2012 to the present, did Oakland deny Student a FAPE by failing to offer:

- a). the appropriate frequency, duration and type of speech and language services;
- b). assistive technology services;
- c). occupational therapy services;
- e). physical therapy services?

Proposed Resolutions

- a). Student shall receive school based counseling and behavior therapy of 80 hours as compensatory education.

b). Student shall be given secondary eligibility in the category of Other Health Impaired.

c). Oakland shall fund a one-to-one adult assistant, trained in Student's unique needs, to assist Student in reaching goals.

d). Student shall receive 200 hours of compensatory education to address her poor academic grades and her intellectual disability and missed speech, occupational therapy, assistive technology, augmentative and alternative communication and physical therapy.

e). Oakland shall fund the following assessments:

1). psycho-educational;

2). academic;

3). occupational therapy;

4). neuropsychological;

5). social emotional;

6). physical therapy;

7). functional behavior;

8). augmentative and alternative communication.

f). Oakland shall facilitate enrollment in and fund transition to a non-public school.

g). Oakland shall adopt assistive technology recommendations at school and home.

h). Oakland shall fund transportation.

i). Oakland shall provide a home hospital teacher during Student's absences and make a plan to ensure Student's education continues when she is medically unable to attend school.

j). Parent shall receive training /counseling to help deal with Student's regression.

k). Oakland shall refrain from using restraints on Student.

- l). Oakland shall fund Student's placement in a non-public or private school.
- m). Oakland shall hold an IEP team meeting to develop behavior goals.
- n). Oakland shall reimburse parents for private speech therapy and tutoring.
- o). Oakland shall provide Parent with an assessment plan and behavior plan within five days of the decision in this case.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). 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 will consist of one document or short series of documents that are related (such as emails). 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 a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Only witnesses disclosed in a party's prehearing conference statement may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) At the beginning of the hearing, each party shall serve on the other party and on OAH a tentative witness list containing the estimated length of the witness' testimony and, 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. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall only question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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 party has moved for telephonic testimony in this matter.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, neither party intends to make an audio recording of the hearing. Any party wishing to record the hearing must notify the ALJ at the hearing and 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 expense reimbursements shall present admissible evidence of the expense, or a stipulation to the 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 written form.

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 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. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator **at OAHADA@dgs.ca.gov** or 916-263-0880 as soon as the need is made known. Additional information concerning a requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>

13. Hearing Closed To the Public. The hearing will be closed 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: November 3, 2014

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings