

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040188

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 17, 2014, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie. Daniel Shaw, Attorney at Law, appeared on behalf of Student. Diane Beall, Attorney at Law, appeared on behalf of Stockton Unified School District (Stockton). 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 November 25 and 26, 2014, beginning at 9:30 a.m. on November 25, and at 8:00 a.m. on November 26. The hearing shall end on November 25, at 5:00 p.m., and at 12:00 p.m. on November 26. The hearing shall resume on December 2, 2014, at 9:30 a.m., and shall continue on December 3-4, 2014, beginning at 9:00 a.m. on those days. The hearing shall continue day to day, Monday through Thursday as needed at the discretion of the ALJ, if additional hearing days are necessary.

The hearing shall take place at 1800 South Sutter Street, Stockton, California 95206. Stockton is responsible for preparing the room for the hearing. Should Stockton move the location of the hearing, OAH and Student's attorney shall be notified immediately. At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Stockton shall ensure that all parties and the ALJ have drinking water, and that tissue is available on the witness table during the hearing. Stockton shall ensure that the facility for the hearing fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities.

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 and Proposed Resolutions. The issues at the due process hearing are listed below.¹

a) For the 2011-2012 school year, beginning on April 1, 2012, including the extended school year, did Stockton deny Student a free appropriate public education by:

1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;

2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;

3) Failing to offer or provide a one-to-one aide adequately trained in applied behavioral analysis;

4) Failing to implement a behavior support plan;

5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;

6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;

7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;

8) Failing to offer measurable goals in all areas of need, including prompt dependence;

9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and

¹ In his complaint Student groups together acts or omissions by Stockton that he claims resulted in a denial of a free appropriate public education. He claims these acts or omissions occurred during the period of time beginning April 1, 2012, and continuing through the 2014-2015 school year. These acts or omissions are considered to be sub-issues. During the PHC it was agreed by the parties that some of the sub-issues were only applicable to one or two school years. Therefore, with the consent of the parties, the issues have been separated by school years, and the parties and ALJ will edit them at the beginning of the hearing.

10) Improperly restraining him?

b) For the 2012-2013 school year, including the extended school year, did Stockton deny Student a FAPE by:

1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;

2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;

3) Failing to offer or provide a one-to-one aide adequately trained in ABA;

4) Failing to implement a behavior support plan;

5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;

6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;

7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;

8) Failing to offer measurable goals in all areas of need, including prompt dependence;

9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and

10) Improperly restraining him?

c) For the 2013-2014 school year, including the extended school year, did Stockton deny Student a FAPE by:

1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;

2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;

3) Failing to offer or provide a one-to-one aide adequately trained in ABA;

- 4) Failing to implement a behavior support plan;
 - 5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;
 - 6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;
 - 7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;
 - 8) Failing to offer measurable goals in all areas of need, including prompt dependence;
 - 9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and
 - 10) Improperly restraining him?
- d) For the 2014-2015 school year, did Stockton deny Student a FAPE by:
- 1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;
 - 2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;
 - 3) Failing to offer or provide a one-to-one aide adequately trained in ABA;
 - 4) Failing to implement a behavior support plan;
 - 5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;
 - 6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;
 - 7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;
 - 8) Failing to offer measurable goals in all areas of need, including prompt dependence;

9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and

10) Improperly restraining him?

e) For the 2011-2012 school year, beginning April 1, 2012, and including the extended school year, did Stockton commit the following procedural errors that significantly impeded Parent's meaningful participation in the individualized education program process, which denied Student a FAPE:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
- 3) Failing to provide a communication log to Parents;
- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;
- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

f) For the 2012-2013 school year, including the extended school year, did Stockton commit the following procedural errors that significantly impeded Parent's meaningful participation in the individualized education program process, which denied Student a FAPE::

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
- 3) Failing to provide a communication log to Parents;
- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;

- classroom;
- 6) Failing to allow Parents to conduct adequate observations in the
 - 7) Failing to timely convene an annual IEP team meeting; and
 - 8) Failing to provide Parents all educational records within five days of written request?

g) For the 2012-2013 school year, and including the extended school year, did Stockton commit the following procedural errors that significantly impeded Parent's meaningful participation in the individualized education program process, which denied Student a FAPE:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
- 3) Failing to provide a communication log to Parents;
- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;
- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

h) For the 2013-2014 school year, and including the extended school year, did Stockton commit the following procedural errors that significantly impeded Parent's meaningful participation in the individualized education program process, which denied Student a FAPE:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
- 3) Failing to provide a communication log to Parents;
- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;

- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

i) For the 2014-2015 school year prior to the filing of the amended complaint by Student on September 23, 2014, did Stockton commit the following procedural errors that significantly impeded Parent's meaningful participation in the individualized education program process, which denied Student a FAPE:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
- 3) Failing to provide a communication log to Parents;
- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;
- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

j) Did Stockton fail to adequately assess Student in all areas of suspected disability during the 2012-2013 and 2013-2014 school years by failing to conduct legally sufficient assessments in the following areas:

- 1) Assistive technology/augmentative communication system;
- 2) Occupational therapy;
- 3) Speech and language; and
- 4) Psychoeducation?

Student has proposed the following resolutions:

- a) Declaratory relief that District denied Student a FAPE for the time periods at issue, and failed to adequately assess him in all areas of suspected disability;
- b) Funding or reimbursing Parents for independent educational evaluations in the following areas:
 - 1) Functional behavior;
 - 2) Speech and language;
 - 3) Occupational therapy;
 - 4) Psychoeducation; and
 - 5) Assistive technology/augmentative communication.
- c) Compensatory education in the form of individual tutoring, speech and language therapy, social skills, occupational therapy, assistive technology (including hardware and software), and behavior services in an amount according to proof at hearing.
- d) Placement in a structured classroom setting with academic challenges, access to typically developing peers, a social skills program, speech and language therapy, occupational therapy, assistive technology, and behavior services.
- e) A one-to-one aide trained in ABAaide for the entire school day with services by a nonpublic agency behaviorist, and supervision by a Master's level board-certified-behavior-analyst, in an amount according to proof at hearing.
- f) Such other relief that is deemed appropriate by the ALJ hearing the case.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing, with each exhibit separated from the next by a divider. It is suggested, but not ordered, that the parties use different colored binders for ease of use by witnesses when testifying. The parties shall use numbers to identify exhibits. At the hearing the ALJ shall place the letter "S" or "D" in front of an offered or admitted exhibit, or an exhibit referred to by a witness, 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 consecutively numbered or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. 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.

The parties are asked, but not ordered, to provide curricula vitae or resumes for witnesses testifying in their professional capacity, such as teachers or behaviorists. 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. Curricula vitae or resumes are not included as exhibits subject to this order.

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 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 are ordered to meet and confer by close of business on November 19, 2014, as to the schedule of witnesses. Student will provide Stockton with a list of proposed witnesses as soon as possible to aid this process.

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. If a witness has been on both parties' witness lists, the party questioning the witness after the initial examination may also ask questions that the party would have asked on direct 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. 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. Neither party has requested telephonic testimony.

7. Audio Recording of the Hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. The ALJ has informed the parties that they may record the hearing. However, the parties are advised that OAH always makes a digital recording of the proceedings, and this recording is the official record of the hearing. Parties who record the hearing are to turn off their recorders whenever the ALJ orders that the hearing is “off the record.” Any violation of this order to turn off recorders when the matter goes off the record will result in the revocation of permission to record the hearing.

8. Motions. During the PHC, Student made an oral motion that a behaviorist he has retained be permitted to observe him in his current classroom. Stockton opposed this request initially, claiming it was untimely. The parties argued the issue orally. The ALJ granted the motion, but ordered that the observation occur no sooner than December 1, 2014. Further, if Stockton wishes, its behaviorist may conduct an observation at the same time Student’s behaviorist conducts her observation. No other pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of November 17, 2014.

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 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 during the hearing unless permission to the contrary is obtained from the ALJ.

11. 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.

12. Special Needs and Accommodations. A Spanish language interpreter is required. No other accommodations are requested or necessary.

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 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 Open/Closed To the Public. The hearing will be closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: November 18, 2014

/s/

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings

On November 17, 2014, a telephonic prehearing conference) was held before Administrative Law Judge Rebecca Freie. Daniel Shaw, Attorney at Law, appeared on behalf of Student. Diane Beall, Attorney at Law, appeared on behalf of Stockton Unified School District (Stockton). 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 November 25 and 26, 2014, beginning at 9:30 a.m. on November 25, and at 8:00 a.m. on

November 26. The hearing shall end on November 25, at 5:00 p.m., and at 12:00 p.m. on November 26. The hearing shall resume on December 2, 2014, at 9:30 a.m., and shall continue on December 3-4, 2014, beginning at 9:00 a.m. on those days. The hearing shall continue day to day, Monday through Thursday as needed at the discretion of the ALJ, if additional hearing days are necessary.

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2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.²

a) For the 2011-2012 school year, beginning on April 1, 2012, including the extended school year, did Stockton deny Student a free appropriate public education by:

1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;

2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;

² In his complaint Student groups together acts or omissions by Stockton that he claims resulted in a denial of a free appropriate public education. He claims these acts or omissions occurred during the period of time beginning April 1, 2012, and continuing through the 2014-2015 school year. These acts or omissions are considered to be sub-issues. During the PHC it was agreed by the parties that some of the sub-issues were only applicable to one or two school years. Therefore, with the consent of the parties, the issues have been separated by school years, and the parties and ALJ will edit them at the beginning of the hearing.

- 3) Failing to offer or provide a one-to-one aide adequately trained in applied behavioral analysis;
- 4) Failing to implement a behavior support plan;
- 5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;
- 6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;
- 7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;
- 8) Failing to offer measurable goals in all areas of need, including prompt dependence;
- 9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and
- 10) Improperly restraining him?

b) For the 2012-2013 school year, including the extended school year, did Stockton deny Student a FAPE by:

- 1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;
- 2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;
- 3) Failing to offer or provide a one-to-one aide adequately trained in applied behavioral analysis;
- 4) Failing to implement a behavior support plan;
- 5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;
- 6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;
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8) Failing to offer measurable goals in all areas of need, including prompt dependence;

9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and

10) Improperly restraining him?

c) For the 2013-2014 school year, including the extended school year, did Stockton deny Student a FAPE by:

1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;

2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;

3) Failing to offer or provide a one-to-one aide adequately trained in applied behavioral analysis;

4) Failing to implement a behavior support plan;

5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;

6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;

7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;

8) Failing to offer measurable goals in all areas of need, including prompt dependence;

9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and

10) Improperly restraining him?

d) For the 2014-2015 school year, did Stockton deny Student a FAPE by:

1) Failing to provide an educational placement that would meet his unique needs and confer educational benefit;

2) Failing to provide behavior support services that would meet his unique needs and confer educational benefit;

3) Failing to offer or provide a one-to-one aide adequately trained in applied behavioral analysis;

4) Failing to implement a behavior support plan;

5) Failing to offer and provide occupational therapy services that would meet his unique needs and confer educational benefit;

6) Failing to offer and provide assistive technology services, equipment, and software that would meet his unique needs and confer educational benefit;

7) Failing to offer and provide mainstreaming opportunities that would meet his unique needs and confer educational benefit;

8) Failing to offer measurable goals in all areas of need, including prompt dependence;

9) Failing to offer speech and language therapy, including failure to develop an adequate communication system that would meet his unique needs and confer educational benefit; and

10) Improperly restraining him?

e) For the 2011-2012 school year, beginning April 1, 2012, and including the extended school year, did Stockton commit procedural errors that denied Student a FAPE, or significantly impeded Parents' meaningful participation in the individualized education program process by:

1) Failing to conduct an adequate behavior assessment;

2) Failing to timely conclude assessments;

3) Failing to provide a communication log to Parents;

4) Failing to timely offer and provide a one-to-one aide;

5) Failing to adequately document aide services in his IEP;

- classroom;
- 6) Failing to allow Parents to conduct adequate observations in the
 - 7) Failing to timely convene an annual IEP team meeting; and
 - 8) Failing to provide Parents all educational records within five days of written request?

f) For the 2012-2013 school year, including the extended school year, did Stockton commit procedural errors that denied Student a FAPE, or significantly impeded Parents' meaningful participation in the individualized education program process by:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
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- 5) Failing to adequately document aide services in his IEP;
- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

g) For the 2012-2013 school year, and including the extended school year, did Stockton commit procedural errors that denied Student a FAPE, or significantly impeded Parents' meaningful participation in the individualized education program process by:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
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- 7) Failing to timely convene an annual IEP team meeting; and
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h) For the 2013-2014 school year, and including the extended school year, did Stockton commit procedural errors that denied Student a FAPE, or significantly impeded Parents' meaningful participation in the individualized education program process by:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
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- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;
- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

i) For the 2014-2015 school year prior to the filing of the amended complaint by Student on September 23, 2014, did Stockton commit procedural errors that denied Student a FAPE, or significantly impeded Parents' meaningful participation in the individualized education program process by:

- 1) Failing to conduct an adequate behavior assessment;
- 2) Failing to timely conclude assessments;
- 3) Failing to provide a communication log to Parents;
- 4) Failing to timely offer and provide a one-to-one aide;
- 5) Failing to adequately document aide services in his IEP;

- 6) Failing to allow Parents to conduct adequate observations in the classroom;
- 7) Failing to timely convene an annual IEP team meeting; and
- 8) Failing to provide Parents all educational records within five days of written request?

j) Did Stockton fail to adequately assess Student in all areas of suspected disability during the 2012-2013 and 2013-2014 school years by failing to conduct legally sufficient assessments in the following areas:

- 1) Assistive technology/aumentative communication system;
- 2) Occupational therapy;
- 3) Speech and language; and
- 4) Psychoeducation?

Student has proposed the following resolutions:

a) Declaratory relief that District denied Student a FAPE for the time periods at issue, and failed to adequately assess him in all areas of suspected disability;

b) Funding or reimbursing Parents for independent educational evaluations in the following areas:

- 1) Functional behavior;
- 2) Speech and language;
- 3) Occupational therapy;
- 4) Psychoeducation; and
- 5) Assistive technology/augmentative communication.

c) Compensatory education in the form of individual tutoring, speech and language therapy, social skills, occupational therapy, assistive technology (including hardware and software), and behavior services in an amount according to proof at hearing.

d) Placement in a structured classroom setting with academic challenges, access to typically developing peers, a social skills program, speech and language therapy, occupational therapy, assistive technology, and behavior services.

e) An applied behavior analysis-trained one-to-one aide for the entire school day with services by a nonpublic agency behaviorist, and supervision by a Master's level board certified behavior analyst, in an amount according to proof at hearing.

f) Such other relief that is deemed appropriate by the ALJ hearing the case.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing, with each exhibit separated from the next by a divider. It is suggested, but not ordered, that the parties use different colored binders for ease of use by witnesses when testifying. The parties shall use numbers to identify exhibits. At the hearing the ALJ shall place the letter "S" or "D" in front of an admitted 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 consecutively numbered or Bates-stamped. Each exhibit binder shall contain a detailed table of contents. 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.

The parties are asked, but not ordered, to provide curriculum vitas or resumes for witnesses testifying in their professional capacity, such as teachers or behaviorists. 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. Curriculum vitas or resumes are not included as exhibits subject to this order.

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 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 are ordered to meet and confer by close of business on November 19, 2014, as to the schedule of witnesses. Student will provide Stockton with a list of proposed witnesses as soon as possible to aid this process.

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. If a witness has been on both parties witness list, the party questioning the witness after the initial examination may also ask questions that the party would have asked on direct 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. 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. Neither party has requested telephonic testimony.

7. Audio Recording of the Hearing. It is within the discretion of the ALJ to permit the audio recording of a due process hearing. The ALJ has informed the parties that they may record the hearing. However, the parties are advised that OAH always makes a digital recording of the proceedings, and this recording is the official record of the hearing. Parties who record the hearing are to turn off their recorders whenever the ALJ orders that the hearing is "off the record." Any violation of this order to turn off recorders when the matter goes off the record will result in the revocation of permission to record the hearing.

8. Motions. During the PHC, Student made an oral motion that a behaviorist he has retained be permitted to observe him in his current classroom. Stockton opposed this request initially, claiming it was untimely. The parties argued the issue orally. The ALJ granted the motion, but ordered that the observation occur no sooner than December 1, 2014. Further, if Stockton wishes, its behaviorist may conduct an observation at the same time Student's behaviorist conducts her observation. No other pretrial motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not made prior to or during the prehearing conference of November 17, 2014.

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 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 during the hearing unless permission to the contrary is obtained from the ALJ.

11. 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.

12. Special Needs and Accommodations. A Spanish language interpreter is required. No other accommodations are requested or necessary.

13. Hearing Open/Closed To the Public. The hearing will be closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: November 18, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings