

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. 2014080551

ORDER FOLLOWING PREHEARING  
CONFERENCE

On January 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Daniel Shaw, Attorney at Law, appeared on behalf of Student. Maria Gless, Attorney at Law, appeared on behalf of Elk Grove Unified School District. The PHC was recorded.

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

1. Motion for Continuance: At the prehearing conference, Elk Grove requested a continuance because the parties are scheduled to hold an individualized education program team meeting on January 26, 2015. Elk Grove anticipates that it will file its own due process case to implement that IEP without parental consent and that it will also file a motion to consolidate that case with this case. Student opposed the motion to continue. This matter has been pending since August 1, 2014.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

No good cause was established and the motion to continue was denied because the events anticipated by Elk Grove had not yet occurred and any actions Elk Grove or the Student might take in the future are speculative at best. The motion is denied without prejudice.

2. Hearing Dates, Times, and Location. The hearing shall take place at the **Elk Grove Unified School District Offices, 9510 Elk Grove-Florin Road, Elk Grove, California, 95624.** The hearing shall take place on February 3, 4, 5, 9, 10, and 11, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On February 3, 2015, the hearing shall begin at 9:30 a.m., on February 9, 2015, the hearing shall begin at 1:30 p.m. and the hearing shall begin at 9:00 a.m. on all remaining days, unless otherwise ordered. Elk Grove 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 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 reordered and reworded for clarity:

*Issue One:* Did Elk Grove procedurally deny Student a free appropriate public education in the 2012-2013 school year by :

- a. failing to adequately report her present levels of performance;
- b. failing to make a clear offer of FAPE;
- c. failing to provide timely progress reports on goals;
- d. continually misrepresenting her projected graduation date to Student, Parent and on IEP documents; and
- e. failing to convene Student's annual IEP team meeting within one year of the previous annual IEP team meeting?

*Issue Two:* Did Elk Grove deny Student a FAPE during the 2012-2013 school year, including extended school year, by:

- a. failing to provide adequate specialized academic instruction;
- b. failing to provide adequate counseling services;
- c. failing to provide adequate behavior services;

- d. failing to provide an adequate behavior support plan;
- e. failing to offer adequate occupational therapy services, including services to address sensory processing;
- f. failing to offer adequate physical therapy services;
- g. failing to offer adequate adapted physical education services;
- h. failing to offer adequate instruction in executive functioning;
- i. failing to offer adequate training in adaptive skills;
- j. failing to offer adequate speech and language therapy, including pragmatics and social skills;
- k. failing to provide measureable goals in all areas of need;
- l. failing to provide an adequate transition plan, goals, and services;
- m. failing to provide adequate extended school year services; and
- n. failing to provide appropriate coursework to allow adequate progress in regular education curriculum?

*Issue Three:* Did Elk Grove procedurally deny Student a FAPE during the 2013-2014 school year by:

- a. failing to adequately report her present levels of performance;
- b. failing to make a clear offer of FAPE;
- c. continually misrepresenting her projected graduation date to Student, Parent and on IEP documents; and
- d. failing to provide timely progress reports on goals;
- e. failing to include Student in IEP process, despite her request to be included;
- f. intentionally withholding time-sensitive and critical information regarding Student's educational program from Student and Parent; and
- g. intentionally sharing private and sensitive information regarding Student's educational program with another student without permission?

*Issue Four:* Did Elk Grove deny Student a FAPE during the 2013-2014 school year, including extended school year, by:

- a. failing to provide adequate specialized academic instruction;
- b. failing to provide adequate counseling services;
- c. failing to provide adequate behavior services;
- d. failing to provide an adequate behavior support plan;
- e. failing to offer adequate occupational therapy services, including services to address sensory processing;
- f. failing to offer adequate physical therapy services;
- g. failing to offer adequate adapted physical education services;
- h. failing to offer adequate instruction in executive functioning;
- i. failing to offer adequate training in adaptive skills;
- j. failing to offer adequate speech and language therapy, including pragmatics and social skills;
- k. failing to provide measureable goals in all areas of need;
- l. failing to provide an adequate transition plan, goals and services;
- m. failing to provide appropriate coursework to allow adequate progress in regular education curriculum?
- n. failing to provide a safe and non-threatening environment; and
- o. failing to provide an appropriate educational placement?

*Issue Five:* Did Elk Grove fail to offer Student a FAPE in the IEP dated May 20, 2014, for the 2014-2015 school year by:

- a. failing to provide adequate specialized academic instruction;
- b. failing to provide adequate counseling services;

- c. failing to provide adequate behavior services;
- d. failing to provide an adequate behavior support plan;
- e. failing to offer adequate occupational therapy services, including services to address sensory processing;
- f. failing to offer adequate physical therapy services;
- g. failing to offer adequate adapted physical education services;
- h. failing to offer adequate instruction in executive functioning;
- i. failing to offer adequate training in adaptive skills;
- j. failing to offer adequate speech and language therapy, including pragmatics and social skills;
- k. failing to provide measureable goals in all areas of need; and
- l. failing to provide an adequate transition plan, goals and services?

### Proposed Resolutions

Petitioner seeks declaratory relief that Elk Grove denied Student a FAPE during the 2012-2013 through 2013-2014 school years, including the extended school years, and failed to make a clear and appropriate offer for the 2014-2015 school year.

Elk Grove shall provide Student with compensatory education in the form of individual tutoring, social skills training, pragmatics training, occupational therapy (including sensory processing), behavior therapy, executive functioning training, physical therapy, transition skills, and individual counseling, in amounts subject to proof at hearing.

Elk Grove shall provide Student with such other and further relief, which is unknown to Student at this time, as deemed appropriate by the administrative law judge at the hearing on this matter.

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 previously exchanged as required above 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. -Those witnesses disclosed in a party's prehearing conference statement, or disclosed at least five business days before the hearing, may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties will meet and confer regarding witness scheduling no later than Wednesday, January 28, 2015. At the beginning of the hearing, each party shall serve on the other party and provide the ALJ 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, the parties will question 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. No party moved for telephonic testimony. A party must request in advance if it intends to present a witness via telephone. If the request is granted, the proposing 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.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, both parties intend 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 shall 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. Student may bring a motion to amend the complaint to include challenging IEP's other than the May 20, 2014, for the 2014-2015 school year. Elk Grove may file its own due process case and make a motion to consolidate that case with this case and also make a motion to continue. At this time, no other prehearing motions are pending or contemplated. Any other motions 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 with the exception of making sure all parties and their representatives are in a position to hear the proceedings. 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](mailto: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: January 23, 2015

/s/

---

MARGARET BROUSSARD  
Administrative Law Judge  
Office of Administrative Hearings