

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT.

OAH CASE NO. 2014100846

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 6, 2015, a prehearing conference was held telephonically before Administrative Law Judge Robert G. Martin, Office of Administrative Hearings. Christina Soliman, Attorney at Law, and Max Goldman, Attorney at Law, appeared on behalf of Student. Jennifer Rowe Gonzalez, Attorney at Law, appeared on behalf of Bakersfield City School District. The PHC was recorded. Each party filed a PHC statement.

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

1. Hearing Dates, Times, and Location. The hearing is expected to require five days to complete, and will commence on Tuesday, February 17, 2015, and continue on February 18, 19, 23 and 25, 2015, and thereafter day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. The hearing shall begin at 1:30 p.m., on February 17, 2015; at 9:30 a.m. on February 23 and 25, 2015; and at 9:00 a.m., on all other days unless otherwise ordered. The hearing shall take place at Bakersfield City School District, 714 Williams St., Bakersfield, CA 93305.

2. The District will provide a facility for the hearing that 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.

3. Issues. The issues to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, are whether the District denied Student a free appropriate public education by reason of the following:

- a. By failing to appropriately assess Student in all areas of suspected disability for Student's May 27, 2014 individualized education program, as amended September 25, 2014, specifically in the areas of:
 - i. Speech and language
 - ii. Occupational therapy
 - iii. Recreational therapy
- b. By failing in Student's May 27, 2014 IEP, as amended September 25, 2014, to include appropriate present levels of performance in the areas of:
 - i. Speech and language
 - ii. Occupational therapy
 - iii. Recreational therapy
- c. By failing in Student's May 27, 2014 IEP, as amended September 25, 2014, to include measurable annual goals in any of Student's areas of need.
- d. By failing in Student's May 27, 2014 IEP, as amended September 25, 2014, to offer Student an appropriate placement.
- e. By failing in Student's May 27, 2014 IEP, as amended September 25, 2014, to offer Student appropriate related services in the areas of:
 - i. Social skills training
 - ii. Recreational therapy
 - iii. Occupational therapy
 - iv. Speech and language
 - v. One-on-one aide
- f. By predetermining District's offer of placement and services in Student's May 27, 2014 IEP, as amended September 25, 2014.
- g. By failing to consider the recommendations of Parent's privately-obtained evaluation of Student presented at Student's May 27, 2014 IEP meeting.

4. Exhibits. At the PHC, Student identified 11 exhibits that Student intended to present at hearing, and District identified 20 exhibits that District intended to present at hearing. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the

hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., and District shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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. Each party will include in its exhibits current resumes of its expert witnesses, and current resumes of any of its percipient witness whose education and employment are expected to be subjects of direct examination.

5. Witnesses. At the PHC Student identified 12 percipient witnesses and one expert witnesses that Student intended to present at hearing. At the PHC, District identified eight percipient witnesses, six of whom were also identified by Student, and no additional expert witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. District indicated that District employee Elaine Mahoney is on leave and District did not agree to make Ms. Mahoney available without a subpoena. The parties will 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.

6. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties are ordered to exchange final witness lists and exhibit binders by 5:00 p.m. on Monday, February 9, 2015. Witnesses and documents not disclosed on or before February 9, 2015 may be excluded at the request of the other party from introduction at the hearing.

If a party's final exhibit or witness list differs from the party's exhibit or witness list submitted for the PHC in this matter, the party shall file and serve a copy of the final exhibit or witness list. Each party reserves the right to present additional witness and documents for purposes of rebuttal.

7. Telephonic Testimony. None requested.

8. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties are ordered to meet and confer no later than Thursday, February 12, 2015 at 5:00 p.m.

regarding the schedule of witnesses for the hearing. The parties are to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence.

On the first day of hearing, before the first witness testifies, the parties shall provide the ALJ with one detailed hour-by-hour schedule of all witnesses expected to testify at the hearing, which list shall also include an estimate of time for each party's direct and cross-examination. 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 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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.

10. Motions. No pretrial motions are pending or contemplated. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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 PHC.

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. At present neither party anticipates the need for special accommodation for any witness or party, or for an interpreter or translation services.

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, or 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 request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

14. Hearing Closed To the Public. The hearing will be closed to the public.

15. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

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

IT IS SO ORDERED.

DATE: February 6, 2015

_____/s/
ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings