

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. 2014070177

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 9, 2015, a telephonic prehearing conference was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Roberta Savage, Attorney at Law, appeared on behalf of Student. Jack Clarke, 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. 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 24, 25, and 26, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On February 24, 2015, the hearing shall begin at 9:30 a.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 fail to offer or provide Student a free appropriate public education for the 2014 extended school year and the 2014-2015 school year by:

- a. unilaterally changing Student's individualized education program in a letter dated May 2014;

- b. predetermining Student's May 20 and June 10, 2014 IEP's which denied Student's mother meaningful participation in the development of Student's IEP¹;
- c. failing to implement a material portion of Student's IEP services by not implementing her services from CARD between July 1 and July 16, 2014; and
- d. failing to draft Student's May 20 and June 10, 2014 IEP's to include accommodations for the 2014-2015 school year?

Proposed Resolutions

Elk Grove maintains CARD as Student's applied behavior analysis (ABA) service provider.

Elk Grove provide Student with compensatory services in the form of ABA services for the missed services between July 1 and July 16, 2014.

Elk Grove contract with an outside provider to train its staff on the proper way to document accommodations on Student's IEP.

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.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under their control reasonably available to the other party.

¹ The parties are unclear as to whether an IEP team meeting was held for Student in the fall of 2014. The parties both agree that if an IEP team meeting was held, the parties will notify the ALJ at the beginning of the hearing and that the IEP date for the fall of 2014 will be added to issue 1B.

Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Each party shall disclose its respective witness list to the other party in compliance with Education Code section 56505.

b) The parties will meet and confer regarding witness scheduling prior to the first day of hearing. 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. 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. Elk Grove may file a separate case naming Student regarding an assessment issue and may move to consolidate the new case with this case. 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 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: February 9, 2015

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings