

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2013040122

v.

CUPERTINO UNION SCHOOL DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2013030785

v.

CUPERTINO UNION SCHOOL DISTRICT.

ORDER FOLLOWING PREHEARING
CONFERENCE FOR HEARING ON THE
REMAND OF COMPENSATORY
REMEDY

On February 27, 2015, a telephonic prehearing conference was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Parent appeared on behalf of Student. Eliza McArthur, Attorney at Law, appeared on behalf of Cupertino Union 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 **Cupertino Union School District Offices, 1309 South Mary, Cupertino, California, 94087.** The hearing shall take place on March 6 and 13, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing shall begin at 9:30 a.m. on both days. Cupertino 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. The purpose of the hearing is to develop a record to determine a remedy for Cupertino's denial of a free appropriate public education to Student from August 29, 2012 until March 28, 2013, based on Cupertino's failure to implement Student's individual education program. The parties are ordered to put on evidence in the following areas:

- a. Student's present needs;
- b. the degree to which Student's present needs can be rectified by compensatory services;
- c. any positive effects Cupertino's limited services provided between August 29, 2012, and March 28, 2013;
- d. regression, if any, between August 29, 2012, and March 28, 2013;
- e. to what extent, if any, the regression was attributable to Cupertino's failure to implement Student's IEP; and
- f. to what extent, if any, the regression was attributable to Student's physical health or his removal from the school active learning environment;

Student will be allowed to put on evidence regarding a private school placement as compensatory education. The parties are encouraged to call relevant IEP team members to testify in this hearing¹.

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

¹ Cupertino moved, in its PHC statement, to vacate the hearing date and requested that the ALJ order Student's IEP team to develop further evidence to support an appropriate compensatory remedy. The motion was denied because the parties have been unable to successfully work together thus far. In lieu of a separate IEP team meeting, the parties are encouraged to have the relevant IEP team members testify during the hearing, so that any relevant information can be communicated directly to the ALJ.

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. 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. Student will serve his witness schedule on Cupertino no later than 5:00 p.m. on March 2, 2015. Cupertino will serve its witness schedule on Student no later than 5:00 p.m. on March 3, 2015. At the beginning of the hearing, each party shall 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 witnesses 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. Neither party moved for telephonic testimony. Any request to call a witness telephonically shall be made to the ALJ. If granted, the party calling the witness 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. During the PHC, Student moved to disallow Ms. McArthur from representing Cupertino at the hearing because he intends to call Ms. McArthur as a witness. Cupertino opposed the motion. The motion was denied. 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 request 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 27, 2015

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings