

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2015070761

v.

WEST CONTRA COSTA UNIFIED SCHOOL
DISTRICT,

WEST CONTRA COSTA UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2015060459

v.

PARENT ON BEHALF OF STUDENT.

ORDER FOLLOWING PREHEARING
CONFERENCE

On September 11, 2015, a telephonic prehearing conference was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings. Attorney Natasha Washington appeared on behalf of Student. Attorney Shawn Olson Brown appeared on behalf of West Contra Costa Unified School District. 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 at West Contra Costa's district offices located at 2465 Dolan Way, San Pablo, California, on September 22, 23, and 24, 2015, and continue day to day, Monday through Thursday, as needed at the discretion of the ALJ.¹ The hearing shall start at 9:30 a.m. on September 22, 2015 and 9:00 a.m. on September 23 and 24, 2015. West Contra Costa shall 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.

¹ 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. West Contra Costa shall ensure that all parties, witnesses, and the ALJ have drinking water available to them.

2. Issues and Proposed Resolutions: The issues for the due process hearing were discussed and clarified during the PHC. The issues are listed below.

District Issue:

Issue 1: Did West Contra Costa's December 3, 2014 psychoeducational assessment and academic assessment of Student meet all legal requirements such that Student is not entitled to psychoeducational and academic independent education evaluations (IEE) at West Contra Costa's expense?

District's Proposed Resolution: West Contra Cost requests that OAH issue and order finding that West Contra Costa's December 3, 2014 psychoeducational assessment and academic assessment of Student meet all legal requirements such that Student is not entitled to psychoeducational and academic independent education evaluations (IEE) at West Contra Costa's expense.

Student Issues:

Issue 2: Did West Contra Costa deny Student a free appropriate public education during the 2014-2015 school year beginning April 27, 2015, the 2015 extended school year, and the 2015-2016 school year by failing to offer Student a one-to-one aide at the April 27, 2015 IEP team meeting?

Issue 3: Did West Contra Costa deny Student a FAPE by failing to offer Student's extended school year services for the 2015 extended school year at the April 27, 2015 IEP team meeting?

Student's Proposed Resolutions: Student requests the following remedies be ordered:

1. West Contra Costa funds an independent psycho-educational assessment;
2. West Contra Costa provides Student with a one-to-one aide;
3. West Contra Costa provides Student with compensatory education in all areas of need, in the amount to be proved at hearing; and
4. Any other remedies deemed appropriate by the ALJ.

3. Exhibits: Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "D" in front of the 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 Bates-stamped. The parties shall include only one document per each exhibit tab. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7), at least five business days prior to hearing. 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: 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 timely disclosed except for good cause shown or in rebuttal, and at the discretion of the ALJ.

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.

The parties shall meet and confer as to the schedule of witnesses and projected length of direct and cross-examination. At the start of the hearing, the parties shall present a final schedule of witnesses with time estimates. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issue presented.

The parties shall provide resumes for each witness who testifies in their profession capacity. Those resumes shall be included in the parties' evidence binder as separate exhibits.

5. Order of Presentation of Evidence and Scope of Witness Examination: Student and West Contra Costa each bear the burden of proof in their respective cases. Student shall present his evidence first, followed by West Contra Costa. Where Student and West Contra Costa intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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: Neither party requested to have witnesses appear by telephone. 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, unless the opposing party has stipulated that the witness may appear by telephone. 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.

7. Electronic Recording of Hearing: At present, Student and West Contra Costa intend to make audio recordings of the hearing. The following conditions 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. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

8. Motions: No pretrial motions are pending or contemplated. Any other 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.

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. 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.

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 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: 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.

13. Hearing Closed To the Public: At the request of Student, the hearing will be open 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: September 15, 2015

_____/s/
B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings