BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT,	OAH Case No. 2015040188 (Primary)
PANAMA-BUENA VISTA UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015031164 (Secondary) ORDER FOLLOWING PREHEARING CONFERENCE ON EXPEDITED HEARING

On April 20, 2014, Administrative Law Judge Alexa J. Hohensee, Office of Administrative Hearings held a telephonic prehearing conference. Attorney Nicole Hodge Amey appeared on Student's behalf. Attorney Stacy Inman appeared on behalf of Panama-Buena Vista Unified School District (District). The PHC was recorded. Based on discussion of the parties, the ALJ issues the following order:

1. Expedited Hearing Dates, Times, and Location. District's written motion to continue the expedited hearing was denied for lack of good cause.

The expedited hearing shall take place on April 29, 30 and May 1, 2015, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ. The hearing shall begin on April 30, 3015 9:30 a.m., and on all other days at 9:00 a.m. unless otherwise ordered.

The hearing shall take place at District's offices located at 3100 Actis Street, Bakersfield, California 93309. District 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.

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.

2. Issues for Expedited Hearing. During the PHC, Student confirmed that his issues for this expedited proceeding are exactly as set forth in Student's PHC statement, and District gave notice that it intended to file a motion to dismiss these expedited issues as already decided in a prior due process proceeding. The issues for the expedited due process hearing are as follows, as stated in Student's PHC statement:

(1) Did District have knowledge under title 20 United States Code section 1415(k)(5) that Student was a child with a disability and entitled to a manifestation determination under the Individuals with Disabilities Education Act with regard to suspensions/removals in excess of ten days that occurred from August 18, 2014 through October 23, 2014?

(2) Did District fail to comply with 20 United States Code section 1415(k)(5) prior to changing Student's placement on October 2, 3, 5, 6, 8 and 23, 2014?

(3) Was Student's behavior a manifestation of his disability?

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" in front of Student's exhibits, and P in front of District's exhibits (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. Each exhibit binder shall contain a detailed table of contents, including the exhibit number, date and title of the document. All documents with separate dates must be separately identified as an exhibit, and marked as separate exhibits, unless they are part of one chain of documents, such as responsive emails.

The parties shall serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). At the hearing, each party shall supply an exhibit binder containing its exhibits, as described above, 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.

The parties shall meet and confer at **10:00 a.m. on Tuesday, April 21, 2015**, to discuss the scope of exhibits in light of the narrow issues in this expedited matter, to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

District shall provide a copy of the 2014-2015 school calendar as one of its exhibits.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not included in the exhibit lists and not previously exchanged shall not be admitted into evidence at the hearing unless it is supported by written declaration under penalty of perjury, and the ALJ rules that it is admissible. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

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 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.

The parties have agreed and are ordered to meet and confer at **10:00 a.m. on Tuesday, April 21, 2015**, as to the scope and schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. The schedule shall include the time contemplated for telephonic witnesses, as listed discussed below.

Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness on all issues when the witness is first called. District shall have witnesses available in case agreement on a witness list is not reached. 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 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.

Prior to the commencement of the due process hearing, 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Education Code, section 56505.1, subd. (h), empowers the ALJ presiding at a due process hearing to set a reasonable limit on the length of the hearing after consideration of all of the following: (i) issues to be heard, (ii) complexity of facts to be proven, (iii) ability of the parties or their representatives to present their respective cases, and (iv) estimates of the parties as to the time needed to present their respective cases.

5. 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.

6. Telephonic Testimony. 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, physical set of tabbed exhibit binders from all parties, containing all of each party's exhibits, prior to the hearing. Electronically scanned and emailed documents do not comply with this requirement. The District 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow his expert witness, Dr. Delaina Martinez, to testify telephonically is granted. Student shall provide Dr. Martinez with a complete tabbed exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and shall cooperate with District to ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness. The witness shall testify from a landline phone, in a room that is private, and she shall be the only person in the room during her testimony. Telephonic testimony shall be limited in time, to no more than two hours. The parties shall consider that time limitation when preparing their witness schedule.

7. Timely Disclosure of Witnesses/Exhibits. Unless the parties agree otherwise, the parties shall comply with Education Code section 56505, subdivision (e)(7), which provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. Education Code section 56505, subd. (e)(8), affords each party the right to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence. If a witness is to be called by both parties, each party shall complete its direct questioning of that witness the first time the witness is called. If a party's witness is called first by an opposing party, direct questioning will be completed at the same time as cross-examination.

9. Motions. No pretrial motions are pending or contemplated, with the exception of District's anticipated motion to dismiss issues from Student's due process hearing request. Any motion other than the motion to dismiss 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 PHC of April 20, 2015.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be signed by counsel for all parties and shall be submitted to the assigned ALJ in written form.

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. No one in the hearing room shall be permitted to engage in text messaging while the hearing is on the record.

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. A Spanish language interpreter is required.

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 requests 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 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 OAH AT THE FAXINATION LINE at 916-376-6319.

If the parties contemplate that the matter may settle on the last business day before the start of the expedited hearing, they shall telephonically inform OAH staff of the status of settlement negotiations, and leave a message for the hearing ALJ on the settlement hotline, including phone numbers where counsel can be reached after hours.

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.

Because this is an expedited hearing, the hearing dates will not be vacated if a settlement is reached subject to board approval. Student must either withdraw the expedited claim, or proceed to hearing.

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

IT IS SO ORDERED.

DATE: April 20, 2015

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings