BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040377 ORDER FOLLOWING PREHEARING CONFERENCE

On August 23, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Margaret Broussard, Office of Administrative Hearings (OAH). Lenore Silverman, Attorney at Law, appeared on behalf of the Oakland Unified School District (District). Anthony Mason, parent representative, appeared on behalf of Student. The PHC was recorded.

Based on discussion with the parties, the following orders are issued:

1. Hearing Dates, Times, and Location: The hearing shall take place on **August 29 and 30, and September 4, 5, and 6, 2013.** Unless otherwise ordered, the hearing shall begin at **10:00 a.m.** on August 29, 2013, and at **9:00 a.m.** on all other days. OAH does not usually schedule hearings to take place on Fridays. Due to scheduling issues with Parent, the ALJ agreed to hear this case on Friday August 30, and Friday, September 6, 2013. **The hearing shall be held at OAH's Oakland Office, 1515 Clay Street, Suite 206, Oakland, CA 94612.** [1]

[1] The days and times of Student's attendance in the school program are subject to an order of the Superior Court of California, County of Alameda. In that matter, Student has his own counsel, Attorney Nikki Clark. Both Student and the District contend that Ms. Clark does not hold any educational rights for Student and that Mother alone holds Student's educational rights. However, the order from the Superior Court, County of Alameda is not entirely clear on this matter. Prior to the start of the hearing, the District will produce a sworn affidavit under penalty of perjury from Ms. Clark attesting to her lack of educational rights for Student. If the affidavit is not produced prior to the first day of hearing, the District is ordered to produce Ms. Clark on the first day hearing, so that the issue of educational rights can be resolved prior to the commencement of the hearing. The hearing will not commence until such time as the holder of educational rights is determined for Student.

2. Notice to Witnesses: The parties shall immediately notify their witnesses of the hearing dates, and shall subpoena witnesses if necessary, to ensure that the witnesses will be available to testify. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party without the need for a subpoena. A witness will not be regarded as unavailable for purposes of showing good cause to continue the hearing if the witness has not been properly notified of the hearing date or properly subpoenaed, as applicable. Student did not file a PHC statement and did not disclose his witnesses until the PHC. Student indicated that he will call the witnesses on the District's witness list as well as two additional witnesses; Terry Wheeler and Michael Bailey. The District waived their objection to the timeliness of the disclosure of these witnesses as identified by Student. Both parties reserved their right to object to any witness testimony once the hearing has commenced.

3. Issues: The issues for hearing are limited to those alleged in the District's complaint.[2] The issues were discussed during the PHC and are reframed and clarified below.

I. Did the District offer Student a free appropriate public education (FAPE) in the least restrictive environment for the 2013-2014 school year, as specified in the June 4, 2013 individualized education program (IEP)?

II. In order to provide Student a FAPE, must the District speak with Student's neurologist and physician to obtain current information regarding the status of a seizure disorder and treatment plan and to discuss other health concerns raised by the parent?

4. Proposed Resolutions: The District has proposed the following resolutions:

I. An order finding that the District's offer of placement in a severely handicapped special day class ("SH-SDC") with related services and supplementary aids at Bret Harte Middle School, as described in the June 4, 2013 IEP, is reasonably calculated to provide Student educational benefit in the least restrictive environment.

II. An order permitting the District to consult with Student's neurologist and physician in order to address issues raised by the parent regarding seizure and other health related issues.

5. Exhibits: Exhibits shall be pre-marked by each party and placed in a three-ring exhibit binder prior to the hearing. The parties' exhibits shall be pre-marked using numbered tabs. Each exhibit binder shall contain a detailed table of contents or list of the documents it contains. Student's exhibit list shall identify each exhibit by number and the

[2] The issues in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues have been reworded and reordered to ensure clarity.

designation "S" (e.g., S1), and the District's exhibit list shall identify each exhibit by number along with a "D" (e.g., D1). Any document over five pages in length shall be internally paginated, or all pages in the binder shall be Bates-stamped or consecutively paginated. Each party shall serve an exhibit binder containing its respective exhibits and list on the other party not less than five business days prior to the start of the hearing. [3] Student did not serve his exhibits on the District within the legal timelines. Student has agreed to deliver his exhibits to the attorney for the District by 5:30 p.m. on August 23, 2013. The District has not waived any objection to the timeliness of the service of Student's documents.

At the hearing, the parties shall supply an additional exhibit binder containing their respective exhibits and lists for use by the ALJ, and another exhibit binder for use by the witnesses. In the event of duplicate exhibits, the most legible version will be used, unless otherwise ordered. The parties shall not serve exhibits on OAH prior to the hearing.

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 may not be admitted into evidence at the hearing unless it is supported by a declaration under penalty of perjury, and the ALJ rules that it is admissible

6. Witnesses: Neither party shall be permitted to call any witnesses not disclosed under Education Code section 56505, subdivision (e)(7), or in the PHC, except for good cause shown, supported by declaration under penalty of perjury, and at the discretion of the ALJ.

Prior to the due process hearing, the parties shall meet and confer informally to discuss their witnesses and arrange a witness schedule. At the commencement of the hearing, the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for any witness's testimony. 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. The parties shall proceed efficiently in their questioning of witnesses and shall narrow their witness lists and their questions to witnesses to avoid unnecessary, cumulative, or duplicative testimony. The parties should bear in mind that evidence will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear.

All objections as to the relevance of the witnesses' testimony are reserved for hearing.

7. 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).) There

[3] Education Code section 56505, subdivision (e)(7). The law also provides that the ALJ has discretion to exclude testimony of witnesses or admission of documents that were not disclosed by the parties. (Ed. Code sections 56505, subd. (e)(8), and 56505.1, subd. (f).)

was no request by either party for telephonic testimony at this time The parties are advised to make a motion for telephonic testimony prior to or at the hearing, should the issue arise.

8. Order of Presentation of Evidence: The District shall produce its evidence first. Where the District and Student intend to call the same witness to testify, the second party questioning the witness may ask questions that they would have asked on direct examination 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 unless otherwise ordered.

9. Open Hearing: At the request of Student, the hearing shall be open. At this time, Student requests that the hearing room accommodate ten members of the public.

10. Motions: Any 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 this PHC.

11. Special Needs and Accommodations: Student's mother has requested both to bring Student to the hearing and to be able to attend the hearing by telephone because of child care issues for Student. The hearing was scheduled such that Student would be in school for all but one of the hearing days for at least five hours of the hearing day. Mother was informed that Student may attend the hearing, but if Student's behavior results in disruption of the hearing, Mother will be asked to remove Student from the hearing. Mother was encouraged to find childcare during the hearing when Student is not in school to allow Mother to participate in the hearing. Mother indicated that the hearing could proceed in her absence with her representative present. Mother also requested to be on the phone to hear the proceedings, when she was not in the hearing room. The ALJ will attempt to allow mother to listen on the phone, if the equipment is available.

12. 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 turned off during the hearing unless permission to the contrary is obtained from the ALJ.

13. Settlement: The parties are encouraged to negotiate to reach a settlement 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 business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact during business hours by telephone at **(916) 263-0880.**

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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST 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. OAH will check for messages the evening prior to the hearing and the morning of the hearing. If the settlement agreement has been executed but is subject to approval of the school board, the parties may file a motion for OAH to vacate the prehearing conference and hearing dates and set a telephonic status conference for a date following board approval.

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

IT IS SO ORDERED.

Dated: August 23, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings