BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: OAKLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	
PARENT ON BEHALF OF STUDENT, v. OAKLAND UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050156 ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE

On July 14, 2017, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings.[1] David Mishook, Attorney at Law, appeared on behalf of Oakland Unified School District. Geri Baskind, Oakland's Director of Legal Support Services for Special Education, was also present. Nicole Hodge Amey, Attorney at Law, appeared on behalf of Parent and Student. The PHC was recorded.

Based upon discussion with the parties, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. The hearing shall take place at OAH's Oakland office located at 1515 Clay Street, Suite 206, Oakland, California, 94612, on July 18, 19, 20, 25, and 26, 2017, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.[2] The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

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

[1] ALJ Tiffany Gilmartin observed the PHC.

[2] On July 20, 2017, the hearing will be in recess for a late lunch break from approximately 12:45 p.m., until approximately 2:00 p.m., to accommodate the schedule of Oakland's counsel who has a scheduled federal district court appearance.

continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, were discussed and clarified during the PHC and are listed below.

Issue 1: Is maintaining Student's educational placement at Sequoia Elementary School substantially likely to result in injury to Student or others such Oakland can remove Student to an appropriate interim alternative educational setting for not more than 45 school days pursuant to 34 CFR section 300.532(b)(2)(ii)?

Issue 2: Is Oakland's proposed intensive counseling enriched special day class at either Sequoia or Prescott Elementary School an appropriate interim alternative educational setting for Student?

Proposed Resolutions: Oakland seeks an order that: (1) maintaining Student's current educational placement is substantially likely to result in injury to Student or others such that she should be placed in an interim alternative educational setting for not more than 45 school days; and (2) its proposed intensive counseling enriched special day class at either Sequoia or Prescott constitutes an appropriate interim alternative educational setting.

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. There shall be only one document or a short series of related documents per 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 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.

Student objects to the admission of Oakland's exhibit number 39 in its PHC statement, "Behavior Tracking Data," on the grounds that this was not produced to her in compliance with her records request. On May 24, 2017, the undersigned specifically ordered Oakland to provide Student with copies of her behavior records including behavior data by June 1, 2017. Oakland asserts that this exhibit was previously provided to Student and may introduce evidence as to the production of this document prior to the time of hearing. Should Oakland intend to use this exhibit at hearing, Student may renew her objection and both parties will be heard. Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

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 and at the discretion of the ALJ. **The parties are encouraged to present resumes for all witnesses testifying in their professional capacity.**

The parties have identified a total of 37 witnesses for hearing. Five days have been scheduled for hearing. Therefore, 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. Counsel shall meet and confer regarding the order of witnesses by July 14, 2017. Oakland objected to a number of Student's identified witnesses on the grounds that their testimony would not be relevant to the issues for hearing and that their testimony would be cumulative. 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 as well as on the issues presented. Each party may request an offer of proof as to the relevance of any witness called to testify.

Student withdrew Candace Forrester as a witness. Student's request to have Oakland's counsel testify regarding home hospital instruction is denied as Student did not show that such testimony is necessary or relevant to the issues for haring. Student may renew her request to call Oakland's counsel as a witness but will be required to provide an offer proof as to the necessity and relevance of his testimony.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. Oakland shall have witnesses available in case agreement on a witness list is not reached. **At the commencement of the due process hearing, the parties shall present proposed written witness schedules with time estimates to the ALJ.** The ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize a witness schedule. Additionally, 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.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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 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. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow Dr. Martinez to testify telephonically, in the event his/her testimony is found relevant and non-cumulative, is granted. Student shall provide Dr. Martinez with a complete exhibit binder/s from each party, containing all of each party's exhibits prior to testifying.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, in order to avoid recording conversations while off the record; and 3) that operation of the party's recording mechanism will not be allowed to delay the hearing. Oakland may also audio record the hearing subject to the above requirements.

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. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Oakland is the petitioning party. Accordingly, Oakland shall present its case-in-chief, followed by Student.

9. Motions. Student intends to file a written motion to allow her to broadcast the due process hearing. **Student is order to file her written motion by close of business July 14, 2017. If Oakland wishes to respond, it must file its response by 12:00 p.m. on July 17, 2017.** No other pretrial motions are pending or contemplated. Any additional 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 today's prehearing conference.

10. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ at the time of hearing in written form and signed by both counsel.

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.

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 staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

13. Hearing Open 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: July 14, 2017

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings