BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015090559
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015090053 ORDER FOLLOWING PREHEARING CONFERENCE

On January 4, 2016, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Rick Ruderman, Attorney at Law, appeared on behalf of Student. Sarah Garcia, Attorney at Law, appeared on behalf of Sacramento City Unified School District. 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 commence at 1:30 p.m. on January 19, 2016, and continue on January 20 and 21, 2016, beginning at 9:00 a.m. Should the hearing not be completed on January 21, 2016, it shall continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at 5735 47th Avenue, Sacramento, California 95824.

Sacramento shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Sacramento shall certify, no later than 5:00 p.m. on January 8, 2015, that the hearing location fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with

disabilities, and shall file that certification with OAH. The certification form can be found on the OAH website.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night.

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 and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

1) In the 2014-2015 and 2015-2016 school years, did Sacramento deny Student a free appropriate public education because it failed to conduct an appropriate and timely behavior assessment of Student?

2) Did Sacramento deny Student a FAPE for the 2015-2016 school year because:

a. the individualized educational program proposed by Sacramento for that school year failed to offer Student an educational placement that would meet his unique needs and provide him with educational benefit;

b. Sacramento IEP team meeting members did not review and revise Student's behavior intervention plan; and

c. Sacramento did not make a clear written offer of placement and services?[1]

[1] The issues have been reframed based on the wording of the issues and allegations in Student's complaint, and the statement of issues in Student's second amended PHC statement.

Proposed Resolutions

1) OAH to order Sacramento to fund an independent psychological assessment of Student.

2) OAH order Sacramento to convene an IEP team meeting to do the following:

a. revise the placement offer for the 2015-2016 school year from Northern California Preparatory School to specialized academic instruction at Kennedy;

b. review and revise Student's behavior intervention plan; and

c. clearly document Student's placement and services.

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 the pages in a party's exhibit binder shall be consecutively numbered or Bates-stamped. 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), unless they mutually agree to a different date. 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.

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 parties stipulate to its admission, or it is supported by written declaration under penalty of perjury, and 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, supported by written declaration under penalty of perjury, 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 no later than close of business on January 12, 2016, to reach agreement on a witness list for the first day of hearing. The District shall have witnesses available in case agreement

on a witness list is not reached. Prior to the commencement of the due process hearing, 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 the 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. If both parties intend to call the same witness, the second party examining the witness may include questions that would have been asked had that party called the witness first. After the first direct and cross-examinations, each party shall be limited in examining the witness as 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 asked that Diedre D'Orazio, Ph.D., be permitted to testify telephonically. Sacramento did not object. Student's motion is granted. Student shall ensure that the requirements in the preceding paragraph will be met.

7. Electronic Recording of Hearing.

a. Audio Recording. Sacramento intends to make an audio recording of the hearing. Such a recording may be made subject to the following conditions: 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 recorder, 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. If Student desires to make such a recording, he shall ask leave to do so before the commencement of the hearing, and the same conditions shall apply.

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, Student is the petitioning party. Accordingly, Student shall present its case-in-chief, followed by Sacramento.

9. Motions. Sacramento moved to dismiss its case, OAH Case No. 2015090053. Student had no objection. Accordingly, Sacramento's case is dismissed without prejudice.

During the PHC, counsel for Student moved for clarification as to which party bears the burden of proof in this matter. Both parties were heard. During the PHC, the ALJ made a preliminary ruling regarding burden of proof. Upon further consideration, and, in accordance with *Shaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387], Student, as the party filing the complaint bears the burden of proof for all issues.

No other pretrial motions are pending or contemplated. 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 the prehearing conference of January 4, 2016.

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. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form. The parties are encouraged to enter into written stipulations concerning the facts of the case as established in Factual Findings section of the undersigned ALJ's Decision in Sacramento's expedited case, OAH Case No. 20156090053, issued October 16, 2015.

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

13. Special Needs and Accommodations. Neither party has requested reasonable accommodations for this hearing. A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or 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: http://www.dgs.ca.gov/oah/Home/Accommodations.aspx .

14. Hearing Open/Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

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 12:00 P.M. ON January 15, 2016, 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.

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

IT IS SO ORDERED.

DATE: January 5, 2016

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings