

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011070195

ORDER DENYING REQUEST TO  
RECONVENE PREHEARING  
CONFERENCE

On March 7, 2012, Administrative Law Judge (ALJ) Rebecca Freie conducted a telephonic prehearing conference (PHC) in this matter. Marcy Tiffany, Attorney at Law, appeared on behalf of Student. Shauna Cunningham, Attorney at Law, appeared on behalf of Paso Robles Joint Unified School District (District). On March 8, 2012, the ALJ issued an order following the PHC that contained a section listing the issues to be presented during the hearing, as well as proposed remedies.

On March 9, 2012, Student filed a request to reconvene the PHC to change his requested remedies, and the District then filed opposition to that request. On March 12, 2012, Student filed a response to the District's opposition.

The Office of Administrative Hearings (OAH) conducts PHCs prior to the commencement of a due process hearing to ensure that the parties understand what will be at issue during the hearing, and to make any orders deemed necessary to ensure that the due process hearing will proceed in an orderly and efficient manner. There is no provision in either the Individuals with Disabilities Education Act (IDEA), or California's implementing statutes and regulations that require a PHC to be held.

During the PHC, the ALJ and parties discussed the issues the ALJ believed were framed in Student's first amended request for due process hearing (complaint) which was filed on November 14, 2011, and is the operative pleading in this matter.<sup>1</sup> Also discussed during the PHC were the remedies Student proposed in that complaint. Student, through his counsel, agreed to eliminate his second proposed remedy, which stated:

District should be ordered to provide Student with a placement, goals and objectives and services consistent with the recommendations of Dr. Freeman and Ms. Sullivan, including, but not limited to, a 40 hour 1:1 ABA [applied behavior analysis] program to be provided by Autism Connections, Inc.

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<sup>1</sup> The issues in a due process hearing are limited to those identified in the complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

In his request to reconvene the PHC, Student now asks that the following proposed remedy be considered at the due process hearing:

Student will be seeking compensatory education through the date of the decision; . . . [and] the following relief: a. The District should be ordered to provide Student with a placement, goals and objectives and services consistent with the recommendations of Dr. Freeman and Genevieve Sullivan BCBA [Board-Certified Behavioral Analyst], including but not limited to, a 40-hour 1:1 ABA program that includes home and school components to be provided by Autism Connections, Inc.

In its opposition to Student's request, the District argues that it will be prejudiced by reconvening the PHC because it "has relied on the issues already negotiated and agreed to at the [PHC] . . . ." However, Student is not asking for a new issue to be added for consideration at hearing. Rather, he is asking that a remedy be considered that is similar to one he withdrew or agreed to not seek at the PHC.

The ALJ sees no need to reconvene the PHC. Student is not adding a new issue to be decided. The ALJ will consider Student's proposed remedy only in the context of an equitable award of compensatory education, to the extent that such is found to be warranted in the Decision to be rendered after the hearing.

#### ORDER

1. Student's request to reconvene the PHC is denied.
2. Student shall be permitted to present evidence pertaining to compensatory education of "a placement, goals and objectives and services consistent with the recommendations of Dr. Freeman and Genevieve Sullivan BCBA, including but not limited to, a 40-hour 1:1 ABA program that includes home and school components to be provided by Autism Connections, Inc."<sup>2</sup>

Dated: March 12, 2012

/s/

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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> However, evidence of compensatory education should not encompass any period of time after the date the amended complaint was filed (November 14, 2011), with the exception of reimbursement to Parents (if warranted) for privately obtained services referenced in the complaint and discussed during the PHC.