

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2014010263

ORDER FOLLOWING PREHEARING  
CONFERENCE AND SETTING DUE  
PROCESS HEARING DATES

On October 20, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Adeniyi A. Ayoade, Office of Administrative Hearings (OAH). Gail Hodes, Attorney at Law, appeared on behalf of Student. David Mishook and Lenore Silverman, Attorneys at Law, appeared on behalf of Oakland Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on November 5 and 6,<sup>1</sup> and November 12 and 13, 2014,<sup>2</sup> and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 5:00 p.m., with the exception of November 5, and November 12, when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the OAH offices at **1515 Clay Street, Suite 206, Oakland, California, 94612.**

OAH will 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. OAH will ensure that the due process hearing location and room are accessible to all persons, and are appropriate for the hearing.

---

<sup>1</sup> While the due process hearing was originally set to begin on November 4, 2014, the parties requested, and were granted a continuance and delay of the hearing for one day, due to calendaring conflict.

<sup>2</sup> November 11, 2014 is not available as a hearing date, as it is a public holiday.

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. Student’s issues for the due process hearing are listed below:

**A. ISSUES.**

- 1) From January 9, 2012, through the present, did Oakland deny Student a free appropriate public education (FAPE) by failing to provide him with an educational program and related services designed to meet his unique mental health and behavioral needs?
- 2) From January 9, 2012, through the present, did Oakland deny Student a FAPE by failing to conduct comprehensive assessments in the area of mental health?
- 3) From April 2013 through October 2013, did Oakland deny Student a FAPE by failing to conduct a triennial assessment of Student and by failing to have an individualized education program in place?
- 4) Did Oakland deny Student’s Parent’s their procedural rights by failing to provide them with Student’s full and complete educational records as requested by Parent’s on November 20, 2013 and April 2, 2014?

**B. PROPOSED RESOLUTION:** As proposed remedies, Student requests an order that Oakland shall: 1) fund an independent evaluation of Student in the area of educationally related mental health; 2) place Student at an appropriate residential school of Parent’s choice with a therapeutic milieu; and 3) provide Student with compensatory education, and reimburse Parent for the cost of all educationally related 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 Oakland 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 in the binder shall be Bates-stamped, or contain pages that have been otherwise consecutively numbered. Each exhibit binder shall contain a detailed table of contents. Pursuant to Education Code section 56505, subdivision (e)(7), the parties shall exchange exhibit binders at least 5 business days prior to hearing. Inclusion of an exhibit in the evidence binder does not mean an exhibit will be admitted by the ALJ. Parties must be prepared to make an offer of proof as to each exhibit.

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 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.

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 properly disclosed to the other party, i.e. at least five business days prior to the commencement of hearing, except for good cause shown, and at the discretion of the ALJ.

The parties are ordered to meet and confer as to the schedule of witnesses prior to hearing. 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.

5. Scope of Witness Examination. If both parties intend to call the same witness, the second party questioning the witness may extend its questioning to areas it intended to pursue on direct examination. After the first direct and cross-examination of such a witness, each party shall be limited in examining the witness only to 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. 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. No witness will be heard by telephone unless this requirement has been fulfilled. Neither party anticipates telephonic testimony.

7. Motions. Other than as discussed herein, no other pretrial motions are pending. 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.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

9. 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.

10. Compensatory Education and 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. 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 clerk at (916) 263-0880, the OAH ADA Coordinator at **916-263-0880, or [OAHADA@dgs.ca.gov](mailto:OAHADA@dgs.ca.gov)** 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>. At present neither party has requested any special accommodation for any witness or party, or an interpreter services.

12. Order of Presentation of Evidence: Student filed this matter. Therefore, Student shall produce his evidence first. Where Student and Oakland intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once.

13. Hearing Closed To the Public. The hearing shall be closed 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 NOON OF THE LAST BUSINESS 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: October 23, 2014

/s/

---

ADENIYI A. AYOADE  
Administrative Law Judge  
Office of Administrative Hearings