

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAKLAND SCHOOL FOR THE ARTS,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015030095

ORDER FOLLOWING PREHEARING
CONFERENCE

On April 10, 2015, a telephonic prehearing conference (PHC) was held before Administrative Law Judge B. Andrea Miles, Office of Administrative Hearings (OAH). Attorney Sarah Kalas Bancroft appeared on behalf of Oakland School for the Arts. Attorney LaJoyce Porter appeared on behalf of Student. The PHC was recorded.

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

1. Motion for Continuance of the PHC: This matter is currently set for hearing on April 21, 2015. At the beginning of the PHC, Student requested to continue the PHC. Student's counsel indicated that she wanted to continue the prehearing conference because she intended to file a request for due process hearing (complaint) on behalf of Student and move to consolidate that case with the case at hand, but she had not yet had the opportunity to do so. This matter was continued at a previously scheduled PHC, which was held on March 20, 2015, for this same reason. Oakland opposed Student's request for continuance on the basis that Student had previously been granted a three week continuance to file Student's complaint and motion to consolidate. Student's counsel indicated that she had not had the time to file Student's complaint and motion to consolidate because she had been occupied with moving her home, visiting her daughter out of state, and participating in an emergency individual education program team meeting.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332 .) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

Student's counsel did not establish good cause to continue the PHC. Therefore, the PHC proceeded as scheduled.

2. Hearing Dates, Times, and Location: The hearing shall take place April 21 – 23, 2015 and continuing day to day, Monday through Thursday at the discretion of the ALJ. The hearing shall be held at OAH's Oakland office located at 1515 Clay Street, Suite 206, Oakland, California 94612. 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 continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

3. Issue and Proposed Resolution: The issue at the due process hearing was discussed and clarified during the PHC. The issue is listed below.

Issue: Did Oakland School of the Arts' September 22, 2014 psycho-educational assessment of Student meet all legal requirements such that Student is not entitled to an independent education evaluation (IEE) at Oakland's expense?

Proposed Resolution: Oakland seeks an order finding that Oakland's September 22, 2014 psycho-education assessment of Student met all legal requirements, such that Student is not entitled to an IEE at Oakland's expense.

4. 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. The parties shall include only one document per each 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 least five business days prior to hearing. 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.

5. 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 or in rebuttal, 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 as to the schedule of witnesses and projected length of direct and cross-examination. At the start of the hearing, the parties shall present a final schedule of witnesses with time estimates.

At the PHC, Oakland raised an objection regarding the relevance of the testimony of several of Student's potential witnesses who were listed in Student's prehearing conference statement. Student made an offer of proof regarding each witness to whom Oakland objected. Based solely on Student's offer of proof, the undersigned made a preliminary ruling that the witnesses' testimony was relevant.

However, Oakland may renew its objection at the due process hearing. Once the ALJ has had the opportunity to hear Oakland's case, the ALJ will have a better context to rule on the relevance of the testimony of Student's witnesses. 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 and the issue presented.

6. Order of Presentation of Evidence and Scope of Witness Examination: Oakland bears the burden of proof and shall present its evidence first, followed by Student. 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. 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.

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). 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.

Student's motion to allow (REDACTED) and (REDACTED) to testify telephonically is granted. Student shall provide (REDACTED) and (REDACTED) with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing.

8. Electronic Recording of Hearing: At present, both parties intend to make an audio recording of the hearing. The following conditions apply to any recording: 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 recording, to avoid recording conversations while off the record; and 3) the operation of the party's recording mechanism will not be allowed to delay the hearing. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing.

9. Motions: Student intends on filing a new due process complaint naming Oakland, along with a motion to consolidate that new case with this case. Oakland intends to oppose Student's motion to consolidate. No additional pretrial motions are pending or contemplated. Any other 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.

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

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 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 clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880, as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

13. Hearing Closed To the Public: At the request of Student, the hearing will 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 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: April 13, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings