

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT AND OAKLAND
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014050135

ORDER FOLLOWING PREHEARING
CONFERENCE

On November 24, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Attorney Natashe Washington appeared on Student's behalf. Attorney Shawn Olson Brown appeared on West Contra Costa Unified School District's behalf. Attorney Lenore Silverman appeared on Oakland Unified School District's behalf. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at **West Contra Costa School District Offices, 2465 Dolan Way, San Pablo, California 94806¹**. It shall take place on December 8, 2014, at 1:30 p.m., December 9-11 and 16, 2014, at 9:00 a.m., and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. The hearing days will conclude at 5:00 p.m., unless otherwise ordered. West Contra Costa shall ensure that the facility for the hearing 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.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

¹ At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. District shall provide water and have tissue available for all parties, witnesses, and the ALJ.

2. Issues and Proposed Resolutions. The issue below was discussed at the PHC and reworded for clarity:

ISSUE 1: Did West Contra Costa deny Student a free appropriate public education during the 2012-2013 school year including the extended school year by failing to:

- a. Address his behavior needs from September 2012 forward,
- b. Conduct a comprehensive assessment of behavior functioning from April 2013 forward, and
- c. Offer an appropriate placement from April 2013 forward?

ISSUE 2: Did West Contra Costa deny Student a FAPE during the 2013-2014 school year by failing to:

- a. Address his behavior needs through April 2014,
- b. Conduct a comprehensive assessment of behavior functioning through April 2014, and
- c. Offer an appropriate placement through July 2014?

ISSUE 3: Did Oakland deny Student a FAPE by failing in its child find obligation from October 2013 through August 2014?

ISSUE 4: Did Oakland deny Student a FAPE in August and September 2014 by failing to offer him an interim placement that was comparable to his prior placement?

Proposed Resolution: Oakland shall provide Student with an appropriate placement with required support and services; West Contra Costa shall fund a independent behavioral assessment; Oakland and West Contra Costa shall provide compensatory education in all areas of need in amounts according to proof at hearing; and other relief unknown to Student as deemed appropriate by the administrative law judge.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). Each exhibit shall be internally paginated, by exhibit, or all pages of a party's exhibit binder shall be Bates-stamped or otherwise consecutively numbered. Each exhibit will consist of one document or short series of documents that are related (for example, each IEP shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a

detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other parties 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.

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 a written declaration under penalty of perjury, and the ALJ rules that it is admissible.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under its control reasonably available to the other parties. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order. Only witnesses disclosed in a party's prehearing conference statement may testify, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) The parties are ordered to meet and confer prior to hearing and develop a proposed witness schedule. At the beginning of the hearing, the parties shall provide the ALJ the tentative schedule containing the estimated length of the witness' testimony and, identifying the witnesses to be call, as opposed to witnesses the party may call depending on the flow of the hearing and the evidence. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party shall only question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross-examinations) so that each witness appears only once.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. Neither party has requested telephonic testimony.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, all 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.

b. Video Recording. No party, witness nor anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. At this time, no prehearing motions are pending or contemplated. Any motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during this prehearing conference.

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

10. Conduct 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.

11. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party. 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 **OAHADA@dgs.ca.gov** or (916) 263-0880 as soon as the need is made known. Additional information concerning a requests for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>

12. Hearing Open To the Public. The hearing will be open to the public at Student's request.

13. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. **IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.**

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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.

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

IT IS SO ORDERED.

DATE: November 24, 2014

/s/

MARGARET M. BROUSSARD
Administrative Law Judge
Office of Administrative Hearings