

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAKLAND UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014070452

ORDER FOLLOWING PREHEARING
CONFERENCE

On July 28, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Alejandra Leon and David Mishook, Attorneys at Law, appeared on behalf of Oakland Unified School District (Oakland). There was no appearance on behalf of Student.¹ The PHC was recorded.

Based on a discussion with Oakland, the ALJ issues the following order:

1. Hearing Dates, Times, and Location. **The hearing shall take place at OAH's Oakland office located at 1515 Clay Street, Suite 206, Oakland, California 94612, on August 5, 2014, at 9:30 a.m., and August 6-7, 2014, at 9:00 a.m.** The hearing shall continue day to day, Monday through Thursday, as needed and at the discretion of the ALJ.

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. Neither party filed a PHC statement. **The parties are ordered to file their witness and exhibit lists with OAH by noon on Monday, August 4, 2014.** The issues in a due process hearing are limited to those identified in the

¹ The ALJ attempted to reach Student's attorney Sheila Brogna at 10:00 a.m., but this call went to a voicemail system. The ALJ left a message informing Ms. Brogna that this was the time and date set for the PHC and that the ALJ would reinstate the PHC at 10:15 a.m. The ALJ again attempted to reach Ms. Brogna at 10:15 a.m. and this call also went to a voicemail system. The ALJ left a second message informing Ms. Brogna that the PHC would proceed with Oakland and that an order following the PHC would be issued.

written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC, and are listed below.²

Issue One: Did Oakland's May 30, 2014 individualized education program offer Student a free appropriate public education (FAPE) in the least restrictive environment?

Issue Two: Did Oakland's 2014 triennial psycho-educational assessment of Student comply with all legal requirements such that Student is not entitled to an independent educational evaluation at public expense?

Issue Three: Did Oakland's 2014 triennial speech and language assessment of Student comply with all legal requirements such that Student is not entitled to an independent educational evaluation at public expense?

Issue Four: Did Oakland's 2014 triennial assistive technology and alternative augmentative communication assessment of Student comply with all legal requirements such that Student is not entitled to an independent educational evaluation at public expense?

Issue Five: Did Oakland's 2014 triennial occupational therapy assessment of Student comply with all legal requirements such that Student is not entitled to an independent educational evaluation at public expense?

Proposed Resolutions: Oakland requests that OAH find that its May 2014 IEP offers Student a FAPE in the least restrictive environment, and that it conducted appropriate psycho-educational, speech and language, assistive technology and alternative augmentative communication, and occupational therapy assessments of Student such that it is not required to fund independent educational assessments in these areas.

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 a party's exhibits shall be 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), at least five business days prior to hearing, no later than Tuesday, July 29, 2014. 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

² At the start of the hearing, counsel may further address the wording of these issues.

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 timely disclosed, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual 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 issues presented.

5. 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.

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; 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. At present, neither party has requested that a witness appear telephonically.

7. Motions.

Audio Recording of the Hearing: It is within the discretion of the ALJ to permit the audio recording of a due process hearing. Neither party requested permission to audio record the hearing. Either or both parties will be permitted to audio record the hearing on the following conditions: 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, 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.

At present Oakland anticipates filing a request to continue the due process hearing. Any additional prehearing 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 the prehearing conference of July 28, 2014.

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. Special Needs and Accommodations. At present neither party has informed OAH of a need for special accommodation for any witness or party, or for interpreter services.

11. Hearing Closed To the Public. In the absence of a request by Student for this hearing be open to the public, the hearing shall be closed.

12. 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 OAH receives a letter of withdrawal or request to dismiss the case, or the signature page of a settlement agreement withdrawing the matter. 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.

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

IT IS SO ORDERED.

DATE: July 28, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings