

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TAMALPAIS UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014090296

ORDER FOLLOWING PREHEARING
CONFERENCE

On February 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Margaret Broussard, Office of Administrative Hearings. Roger Greenbaum, Attorney at Law, appeared on behalf of Student. Jan Tomsy, Attorney at Law, appeared on behalf of Tamalpais Union High School District. 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 the **Tamalpais Union High School District Offices, 395 Doherty Drive, Larkspur, California, 94941.** The hearing shall take place on March 3, 4, 5, and 10, 2015, and continue day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On March 3, 2015, the hearing shall begin at 9:30 a.m., and the hearing shall begin at 9:00 a.m. on all remaining days, unless otherwise ordered. Tamalpais 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.

2. Issues and Proposed Resolutions. The issues below were discussed at the PHC and reordered and reworded for clarity¹:

Issue One: Did Tamalpais commit the following procedural violations which resulted in a denial of a free appropriate public education for Student because the violations caused a loss of educational opportunity for Student and/or denied Parents the right to meaningfully participate in the IEP development process:

- a. not have an individualized education program in place at the beginning of the 2013-2014 school year;
- b. not having an IEP in place at the beginning of the 2014-2015 school year;
- c. holding the December 18, 2014 IEP outside the legal timeline;
- d. predetermining Student's placement in the September 19, 2012 IEP team meeting;
- e. predetermining Student's placement in the December 18, 2014 IEP team meeting; and
- f. from September 3, 2012 through September 19, 2012, failing to hold an IEP within the legal timelines based upon assessments completed in Spring 2012?

Issue Two: Did Tamalpais fail to substantively offer Student a free appropriate public education in the IEP dated September 19, 2012?

Issue Three: Did Tamalpais fail to substantively offer Student a free appropriate public education in the IEP dated December 18, 2014?

¹ As clarified at the PHC, Student did not plead a substantive violation for the 2013-2014 school year separately. During the PHC, Student alleged that Tamalpais did not hold an IEP meeting during the 2013-2014 school year and wanted that issue added to this hearing. Student made no such allegation in the due process complaint, and was not allowed to add this allegation during the prehearing conference. Notwithstanding Student's right to file for hearing on this additional allegation, the parties may put on evidence and make arguments during the hearing and in closing briefs regarding any effect the September 19, 2012 IEP may or may not have when determining any liability Tamalpais may or may not have from September 19, 2013, until the next IEP team meeting held on December 18, 2014.

Proposed Resolutions

Petitioner seeks reimbursement for:

- a. the cost of tuition at Daniels Academy from March 2012 to May 31, 2013, at the approximate rate of \$8,000 per month;
- b. the cost of related transportation to place Student at Daniels Academy and for therapeutic family visits from March 2012 to May 31, 2013;
- c. the cost of tuition at Franklin Academy from in or about summer 2013 to the present, at the approximate rate of \$18,000 per quarter;
- d. the cost of related transportation to place Student at Franklin Academy and for therapeutic family visits from in or about summer 2013 to present;
- e. for prospective placement at Franklin Academy until such time as Tamalpais offers Student a FAPE;
- f. the cost of fees incurred for private evaluations and consulting services, including but not limited to amounts paid to Roslyn Wright, PsyD., for additional consulting and other services, and for amounts paid to Molly Baron, M.A., in the amount of approximately \$4,300; and
- g. attorneys' fees and costs.

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 (such as emails). Each exhibit binder shall contain a detailed table of contents. Each party shall serve an exhibit binder containing its respective exhibits on the other party 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.

4. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under their control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having

to call a witness twice or out of order. Each party shall disclose its respective witness list to the other party in compliance with Education Code section 56505.

b) The parties will meet and confer regarding witness scheduling prior to the first day of hearing. At the beginning of the hearing, each party shall serve on the other party and provide the ALJ a tentative witness list containing the estimated length of the witness' testimony and, identifying the witnesses the party intends to call. 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, the parties will question witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once.

6. Telephonic Testimony. Student moved and was granted the right to call [redacted] to appear telephonically. Student 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.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, Student intends to make an audio recording of the hearing. Tamalpais may record the hearing as well, should it choose. Any party wishing to record the hearing must notify the ALJ at the hearing and the following conditions shall 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 or 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. Student may file a motion, not later than 5:00 p.m. on February 26, 2015, regarding Tamalpais' alleged failure to respond to the complaint. At this time, no other prehearing motions are pending or contemplated. Any other motions 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. Compensatory Education and Reimbursement. Any party seeking expense reimbursements shall present admissible evidence of the expense, or a stipulation to the amount, as part of its case in chief. Any party seeking compensatory education shall provide

evidence regarding the type, amount, duration, and need for any requested compensatory education.

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 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.

12. Special Needs and Accommodations. At present neither party anticipates the need for any special accommodation for any witness or party with the exception of making sure all parties and their representatives are in a position to hear the proceedings. 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 request for reasonable accommodation is available on OAH's website at <http://www.dgs.ca.gov/oah/Home/Accommodations.aspx>

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: February 24, 2015

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings