BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016090649
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016111028 ORDER FOLLOWING PREHEARING CONFERENCE

On December 2, 2016, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Max Goldman, Attorney at Law, and Christina Soliman, attorney at law, appeared on behalf of Student. Donald Erwin, Attorney at Law, appeared on behalf of District. The PHC was recorded.

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

1. Motion to consolidate. This matter was initiated by Student's filing OAH case number 2016090649 (Student's case) on September 9, 2016. While that matter was pending and shortly before the prehearing conference, District filed an action on November 28, 2016, which has been given OAH case number 2016111028 (District's case). District now seeks to consolidate its new matter with Student's case. This matter was raised by the parties at the prehearing conference. Student stated on the record that he did not oppose consolidation.

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative

proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, the consolidated cases and District's newly-filed Case involve a common question of law or fact involving the same parties, specifically District's assessments of Student in the time period between August and December of 2014. Consolidation furthers the interests of judicial economy because it would be inefficient to separately resolve Student's and District's claims. As noted, Student does not oppose consolidation. Accordingly, consolidation is granted. District has not requested a continuance of the dates in Student's case and accepted those dates set in that case for hearing of District's matter. Accordingly, Student's case, OAH case number 2016090649, will be designated as the primary, and the consolidated matter heard on those dates. All future filings should be under Student's case number and all dates as set in that case remain in effect.

2. Hearing Dates, Times, and Location. The hearing shall take place on December 13, 14, 15, 20, 21, and 22, and continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the OAH offices at 15350 Sherman Way, Van Nuys, CA 91406. 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. Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Student's issues are:

A. Did District deny Student a free and appropriate public education by failing to adequately assess him in all areas of known or suspected disability by:

1. conducting an inadequate psychoeducational assessment in September of 2014?
2. conducting an inadequate speech and language assessment in September of 2014?
3. conducting an inadequate assistive technology and augmentative and alternative communication assessment in December of 2014, and by failing to conduct an assessment before that date?
4. conducting an inadequate functional behavior analysis in November of 2014, and by failing to conduct an assessment before that date?
5. conducting an inadequate Occupational Therapy assessment for the September 2014 IEP team meeting?

6. conducting an inadequate Adapted Physical Education assessment for the September 2014 IEP team meeting?

7. conducting an inadequate Physical Therapy assessment for the September 2014 IEP team meeting?

B. Did District deny Student a FAPE by failing to accurately state Student's present levels of performance at the IEP team meeting held on:

1. September 12, 2014?
2. January 12, 2015?
3. September 11, 2015?
4. June 3, 2016?

C. Did District deny Student a FAPE by failing to provide appropriate and measurable annual goals at the IEP team meeting held on:

1. September 12, 2014?
2. January 12, 2015?
3. September 11, 2015?
4. June 3, 2016?

D. Did District deny Student a FAPE in the 2014-2015 school year by failing to offer Student:

1. placement in a small, highly-structured classroom with one-to-one instruction and aids and support tailored to deaf-blind students?

2. intensive one-to-one applied behavior analysis behavior intervention services, including sign language communication, at school and in home?

3. one-to-one deaf-blind intervener services?

4. appropriate intensive individualized auditory verbal therapy?

5. appropriate intensive individualized speech and language therapy?

6. appropriate assistive technology and/or augmentative and alternative communication devices, support and services?

7. appropriate intensive individualized clinic-based occupational therapy services?

8. appropriate adapted physical education services?

9. appropriate social skills training or recreational therapy?

10. appropriate intensive individualized clinic-based physical therapy services?

11. appropriate deaf and hard of hearing services?

12. appropriate blind and partially-sighted services?

13 appropriate extended school year services?

14. appropriate orientation and mobility services?

15. appropriate curriculum accommodations and modifications to allow Student to access his education?

E. Did District deny Student a FAPE in the 2015-2016 school year by failing to offer Student:

1. placement in a small, highly-structured classroom with one-to-one instruction and aids and support tailed to deaf-blind students?
2. intensive one-to-one applied behavior analysis behavior intervention services, including sign language communication, at school and in home?
3. one-to-one deaf-blind intervener services?
4. appropriate intensive individualized auditory verbal therapy?
5. appropriate intensive individualized speech and language therapy?
6. appropriate assistive technology and/or augmentative and alternative communication devices, support and services?
7. appropriate intensive individualized clinic-based occupational therapy services?
8. appropriate adapted physical education services?
9. appropriate social skills training or recreational therapy?
10. appropriate intensive individualized clinic-based physical therapy services?
11. appropriate deaf and hard of hearing services?
12. appropriate blind and partially-sighted services?
13 appropriate extended school year services?
14. appropriate orientation and mobility services?
15. appropriate curriculum accommodations and modifications to allow Student to access his education?

F. Did District deny Student a FAPE in the 2016-2017 school year by failing to offer Student:

1. placement in a small, highly-structured classroom with one-to-one instruction and aids and support tailored to deaf-blind students?
2. intensive one-to-one applied behavior analysis behavior intervention services, including sign language communication, at school and in home?
3. one-to-one deaf-blind intervener services?
4. appropriate intensive individualized auditory verbal therapy?
5. appropriate intensive individualized speech and language therapy?
6. appropriate assistive technology and/or augmentative and alternative communication devices, support and services?
7. appropriate intensive individualized clinic-based occupational therapy services?
8. appropriate adapted physical education services?
9. appropriate social skills training or recreational therapy?
10. appropriate intensive individualized clinic-based physical therapy services?
11. appropriate deaf and hard of hearing services?

12. appropriate blind and partially-sighted services?
13 appropriate extended school year services?
14. appropriate orientation and mobility services?
15. appropriate curriculum accommodations and modifications to allow Student to access his education?

G. Did District deny student a FAPE by failing to have an IEP in place at the start of the 2016-2017 school year?

H. Did District deny Student a FAPE in the 2014-2015 school year by failing to offer special education and related services based upon peer-reviewed research for a child with his disabilities?

I. Did District deny Student a FAPE in the 2015-2016 school year by failing to offer special education and related services based upon peer-reviewed research for a child with his disabilities?

J. Did District deny Student a FAPE in the 2016-2017 school year by failing to offer special education and related services based upon peer-reviewed research for a child with his disabilities?

K. Did District deny Student a FAPE in the 2014-2015 school year by failing to provide Student with an adequate behavior support plan?

L. Did District deny Student a FAPE in the 2015-2016 school year by failing to provide Student with an adequate behavior support plan?

M. Did District deny Student a FAPE in the 2016-2017 school year by failing to provide Student with an adequate behavior support plan?

N. Did District deny Student a FAPE in the 2014-2015 school year by the procedural violations of:

1. Predetermining its offer of placement and services?
2. Significantly impeding parents' opportunity to participate in the decision-making process regarding the provision of a FAPE?
3. Failing to provide prior written notice regarding its decision to deny reimbursement for an auditory device lost in April 2015?

O. Did District deny Student a FAPE in the 2015-2016 school year by the procedural violations of:

1. Predetermining its offer of placement and services?
2. Significantly impeding parents' opportunity to participate in the decision-making process regarding the provision of a FAPE?

M. Did District deny Student a FAPE in the 2016-2017 school year by the procedural violations of:

1. Predetermining its offer of placement and services?
2. Significantly impeding parents' opportunity to participate in the decision-making process regarding the provision of a FAPE?

District's issues are:

N. Did District conduct an appropriate assessment, such that it should not be required to provide an independent educational evaluation at public expense, by the:

1. September 12, 2014 preschool team assessment?
2. August 27, 2014 language and speech assessment?
3. December 12, 2014 assistive technology assessment?
4. November 30, 2014 language and speech-augmentative and alternative communication assessment?
5. November 18, 2014 functional behavior assessment?
6. August 22, 2014 occupation therapy assessment?
7. August 22, 2014 adaptive physical education assessment?
8. August 22, 2015 physical therapy assessment?

As remedies, Student seeks placement in a small and individualized setting for deaf-blind students, a full-day NPA behavioral aide, supervision hours for the NPA behavioral aide, and one-to-one deaf/blind intervener services. Student also seeks on-going and compensatory intensive AVT by a Listening and Spoken Language Specialist Auditory-Verbal therapist, non-public agency group and individual S&L services, clinic-based non-public agency occupational therapy services, assistive technology and\or augmentative and alternative communication devices and support, non-public agency social skills and/or recreational therapy services, clinic-based non-public agency physical therapy services, non-public agency deaf and hard of hearing services, non-public agency blind/partially sighted services, and orientation and mobility services. In addition, Student seeks an order direction the provision of extended school year services and independent educational evaluations in psychoeducational functioning, speech and language, assistive technology/ augmentative and alternative communication, behavior, occupation therapy, sensory integration, adaptive physical education, orientation and mobility, and physical therapy.

District seeks an order finding that it is not required to fund any independent educational evaluations for Student.

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 (consecutively paginated). 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 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.

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. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

The parties have agreed to meet and confer to coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. 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 prepare and present to the ALJ a written schedule for each day of hearing at the start of each day's proceedings..

6. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once.

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. No witness will be heard by telephone unless all these requirements have been fulfilled.

Student's motion to allow Dr. Karres to testify telephonically, if necessary, is granted. Student shall provide Dr. Karres with a complete exhibit binder from each party, 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. No other witness is expected to need to testify telephonically.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) As the filing party, Student shall present first. The witnesses who are to be called by more than one party will first be examined by Student's counsel. After their direct testimony, District may present them for direct testimony on its behalf and for any cross-examination. Each side will then have the opportunity for further questioning, limited in scope as set forth in Item 6, above.

9. Motions. No further pretrial motions are pending or contemplated. 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.

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

12. 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.

13. 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 Angela Stevens, the assigned calendar staff, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

14. Hearing Closed To the Public. The hearing will be closed to the public. All witnesses are excluded from the hearing room when not testifying, except for party representatives.

15. 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.

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

IT IS SO ORDERED.

DATE: December 5, 2016

DocuSigned by:
Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings