BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT AND SAN JOAQUIN COUNTY OFFICE OF EDUCATION.	OAH CASE NO. 2013110831 ORDER FOLLOWING PREHEARING CONFERENCE

On February 3, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Carly Christopher, Attorney at Law, appeared on behalf of Student. Rodney L. Levin, Attorney at Law, appeared on behalf of San Joaquin County Office of Education (County). Roger Goatcher, Director of Student Services, appeared on behalf of the Manteca Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The due process hearing shall take place on February 10 through 12 and February 24 through 27, 2014. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for February 10 and 24, 2014, when the hearing shall begin at 1:30 p.m., unless otherwise ordered. The hearing shall take place at the County's offices, located at 2901 Arch Airport Road, Stockton, California 95991.[1]

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.

[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 County's representatives; (4) one table for the ALJ with a nearby electrical outlet; and (5) one witness table. County shall ensure that all parties and the ALJ have drinking water and tissue available to them.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Issue 1: Did District and County deny Student a free appropriate public education (FAPE) by violating Student's and Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process and/or denied Student an educational benefit by:

A. For the 2012-2013 and 2013-2014 school years, failing to assess Student in all areas of suspected disability, including an augmentative communication (AAC), assistive technology (AT), functional behavior analysis (FBA) and functional analysis through (FAA) April 30, 2013; and

B. For the entire 2013-2014 school year failing to conduct an FBA?

Issue 2: For the 2012-2013 and 2013-2014 school years, did District and County deny Student a FAPE by violating Student's and Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process and/or denied Student an educational benefit by failing to:

a. Provide accurate baselines on all goals in its individualized education plan (IEP) offers;

b. Report and update all Student's goals in the annual IEP team meetings;

c. Update all of Student's IEP goals based on data;

d. Provide Parents with quarterly IEP goal progress reports;

e. Provide Parents with data regarding Student's progress on goals;

f. Translate into Spanish all IEP offers, letters and assessments;

g. Permit Parents the opportunity to observe Student at school;

h. Consider parental input and concerns regarding services to Student as expressed at IEP team meetings and correspondence;

i. Consider parental input and concerns regarding Student's health as expressed at IEP team meetings and correspondence; and

j. Permit Parents to voice their concerns through correspondence and in IEP team meetings.

Issue 3: For the 2012-2013 and 2013-2014 school years, did District and County deny Student a FAPE by failing to:

a. Create goals in all areas of needs as expressed at IEP team meetings and correspondence;

b. Draft goals in accordance with state standards based curriculum;

c. Offer appropriate services in the areas of applied behavior analysis (ABA), academics, a one-to-one aide, occupational therapy, and speech and language;

d. Materially implement Student's IEP's in the areas of ABA, including specialized academic instruction and a one-to-one aide, and speech and language; and

e. Address Student's English language development through appropriate goals and services?

Proposed Resolutions:

a. Student requests that District and County reimburse Student's Parents for private occupational therapy, speech and language and psychoeducational assessments.

b. Student also seeks an order that to receive FAPE that he requires a placement to meet his unique needs Student further requests as FAPE a 40 hour a week ABA program, which includes two hours a day service in Student's home. Additionally, District shall provide a one-to-one behavior therapist from a non-public agency, a non-public agency behavior consultant with a masters' level Board Certified Behavior Analyst for 16 hours a month, and a non-public agency clinical supervisor for 10 hours a month. Further, the non-public agency shall provide Parents with four hours a week of behavioral training. Student shall receive two hours a week of individualized speech and language therapy, one-and-a-half hours a week of individualized occupational therapy, and a one hour a week social skills group through a non-public agency. District shall provide Student with an iPad.

c. The District shall provide for AAC and AT assessments and implement the assessment recommendations.

d. As compensatory education, Student requests that District and County fund of $15,000 for Parents to use for compensatory education and services and 40 hours of AT services.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. District and County shall submit a joint exhibit binder. 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/County 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. By 5:00 p.m. on February 3, 2014, the parties shall have served 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.

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 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 parties are ordered to meet and confer for the first week of hearing by February 6, 2014, as to the schedule of witnesses, and have agreed 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. By 1:00 p.m. on February 7, 2014, each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.[2] For the second week of hearing, the parties shall meet and confer and provide to each other and OAH the final witness list described above by 1:00 p.m. on February 21, 2014. Prior to the commencement of the due process hearing each week, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule for that week. 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

[2] Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

5. Scope of Witness Examination. 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, 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 and OAH grant the party's request. No party requested telephonic testimony.

7. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student, County, and then District. If a witness is to be called by more than one party, the parties shall conduct direct and cross-examination so that the witness need only testify once.

8. Motions. Student's request to audio tape the hearing is granted. District and County may record the hearing if they wish. The recording by OAH shall be official record of the hearing and no stoppages of the hearing will be granted to accommodate the parties' recording, and parties must cease recording when the ALJ informs the parties that the matter is off the record. Failure to comply will cause the ALJ not to permit the offending to record the hearing.

No 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 of February 3.

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 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 during the hearing unless permission to the contrary is obtained from the ALJ.

11. 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.

12. Special Needs and Accommodations. A Spanish language interpreter is required.

13. Hearing Open to the Public. At the request of Parents, the hearing will be open to the public. Witnesses, except for party representatives, shall be excluding from the hearing room until the conclusion of their testimony.

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 business days or fewer 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. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST 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. The ALJ will check for messages the evening prior to the hearing and 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.

Dated: February 5, 2014

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings