BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CABRILLO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015030583 ORDER FOLLOWING PREHEARING CONFERENCE

On June 26, 2015, a telephonic prehearing conference was held before Administrative Law Judge Theresa Ravandi, Office of Administrative Hearings. Laurene Bresnick, Attorney at Law, appeared on behalf of Parents and Student. Matthew J. Tamel, Attorney at Law, appeared on behalf of Cabrillo Unified School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place at Cabrillo's District office[1] located at 498 Kelly Avenue, Half Moon Bay, California, 94019, on July 15, 2015 at 9:30 a.m., and July 16, 21, 22, 23, and 28, 2015, at 9:00 a.m., and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ.[2] Cabrillo shall provide a facility for the hearing that 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 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

[1] Cabrillo will notify all parties and OAH as soon as possible if it is seeking a change in venue because of possible on-going construction.

[2] At a minimum, the hearing room shall have four or more separate tables capable of being moved into a courtroom configuration with an electrical outlet near the ALJ's table. Cabrillo shall ensure that all parties, witnesses, and the ALJ have drinking water available to them throughout the hearing.

continue the hearing if the witness is not properly notified of the hearing date or properly subpoenaed, as applicable.

2. Issues and Proposed Resolutions. The issues in a due process hearing are limited to those identified in the 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.[3]

Issue One: Did Cabrillo deny Student a free appropriate public education by failing to assess Student as follows:

a. failing to provide a timely initial assessment to determine eligibility, identify appropriate services and convene an individualized education program team meeting and offer special education following Parents' requests for a special education referral in March, April, May and June 2013;

b. failing to assess Student in the area of social-emotional functioning from the 2013 extended school year, through the 2013-2014, and 2014-2015 school years including extended school year; and

c. failing to conduct timely assessments of Student which captured her needs in the areas of occupational therapy, adaptive physical education, and behavior from the extended school year 2013, through the 2013-2014, and 2014-2015 school years including extended school years?

Issue Two: Did Cabrillo deny Student a FAPE by failing to provide Parents with prior written notice as follows:

a. when it refused to assess Student in response to Parents' requests for referral in March, April, May, and June 2013;

b. when it directed Parents to the Belmont Redwood Shores School district for initial assessment; and

c. when it offered one IEP placement option or an individual service plan as the only alternatives and failed to explain what assessments, records or reports it used to make these offers at the October 2013 and March 2014 IEP team meetings?

Issue Three: Did Cabrillo deny Student a FAPE at the October 4, 2013 IEP team meeting by:

a. committing the procedural violation of failing to consider a continuum of alternative programs and placement options;

[3] The parties may further discuss the framing of the issues at the start of the hearing.

b. committing the procedural violation of predetermining its IEP offer;

c. committing the procedural violation of failing to make a formal, specific, written offer that clearly identified the proposed placement and services and the start date, location, and duration of the placement and services;

d. failing to offer a placement, program, and services that were reasonably calculated to confer meaningful educational benefit; and

e. failing to identify accurate present levels of performance and develop goals rationally related to these levels and designed to address Student's needs in the areas of academics, occupational therapy, behavioral support, socialization, adaptive physical education, assistive technology and functional/emotional/social skills at school?

Issue Four: Did Cabrillo deny Student a FAPE at the March 17, 2014 IEP team meeting by:

a. committing the procedural violation of failing to consider a continuum of alternative programs and placement options;

b. committing the procedural violation of predetermining its IEP offer;

c. committing the procedural violation of failing to make a formal, specific, written offer that clearly identified the proposed placement and services and the start date, location, and duration of the placement and services;

d. failing to offer a placement, program and services that were reasonably calculated to confer meaningful educational benefit; and

e. failing to identify accurate present levels of performance and develop goals rationally related these levels and designed to address Student's needs in the areas of academics, occupational therapy, behavioral support, socialization, adaptive physical education, assistive technology and functional/emotional/social skills at school?

Issue Five: Did Cabrillo deny Student a FAPE at the November 19, 2014 IEP team meeting by:

a. committing the procedural violation of failing to consider a continuum of alternative programs and placement options;

b. committing the procedural violation of predetermining its IEP offer;

c. failing to offer a placement, program and services that were reasonably calculated to confer meaningful educational benefit; and

d. failing to identify accurate present levels of performance and develop goals rationally related to these levels and designed to address Student's needs in the areas of academics, occupational therapy, behavioral support, socialization, adaptive physical education, assistive technology and functional/emotional/social skills at school?

Issue Six: Did Cabrillo deny Student a FAPE at the January 28, 2015 IEP team meeting and March 27, 2015 amendment IEP by:

a. committing the procedural violation of failing to consider a continuum of alternative programs and placement options;

b. committing the procedural violation of predetermining its IEP offer;

c. committing the procedural violation of failing to make a formal, specific, written offer that clearly identified the proposed placement and services and the start date, location, and duration of the placement and services;

d. failing to offer a placement, program and services that were reasonably calculated to confer meaningful educational benefit; and

e. failing to identify accurate present levels of performance and develop goals rationally related to these levels and designed to address Student's needs in the areas of academics, occupational therapy, behavioral support, socialization, adaptive physical education, assistive technology and functional/emotional/social skills at school?

Issue Seven: Did Parents' unilateral placement of Student at Charles Armstrong School from July 2, 2013, through November 21, 2014, constitute an appropriate alternative education program for Student?

Issue Eight: Did Parents' unilateral placement of Student at Arbor Bay School from December 8, 2014, to the time of hearing constitute an appropriate alternative education for Student?

Proposed Resolutions: Student requests an order for reimbursement of tuition at Charles Armstrong School from July 2, 2013, through November 21, 2014, including transportation; reimbursement for tuition at Arbor Bay School from December 8, 2014, through the time of hearing, including transportation; reimbursement for ABA therapy from Therapeutic Learning Consultants from October through December 2014; reimbursement for private evaluations from Dr. Cheryl Ambler; and prospective placement through an IEP at Arbor Bay School for the 2015-2016 school year, including extended school year.

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 are required to 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 timely exchanged may not be admitted into evidence at the hearing, unless 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. Parties will not be permitted to call any witnesses who are not timely disclosed, except at the discretion of the ALJ.

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. Student identified 15 witnesses. Cabrillo identified 18 witnesses, 2 of whom are shared witnesses, for a total of 31 witnesses. The parties are ordered to meet and confer by July 9, 2015, as to the schedule of witnesses and projected length of direct and cross examination.

At the start of the hearing, the parties shall present a final, joint schedule of witnesses with time estimates. 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 issue presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof and shall present her evidence first, followed by Cabrillo. Where Student and Cabrillo 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, 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.

Cabrillo's motion to allow Melissa Nicovic to testify telephonically was unopposed and was granted. Cabrillo shall provide Ms. Nicovic 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.

7. Electronic Recording of Hearing. At this time, neither party intends to audio record the hearing. Both parties are authorized to make an audio recording of the hearing but shall inform the ALJ if they intend to do so. 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. Failure to comply with these conditions may result in a revocation of this order which grants the parties permission to make an audio recording of the hearing. No party is allowed to video tape the proceedings.

8. Motions. At present Student does not anticipate filing any prehearing motions. Cabrillo may file a motion in limine as to possible medical evidence and testimony by medical doctors. Aside from the motion in limine, 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 June 26, 2015.

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

11. Compensatory Education and 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 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, or 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.

At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

13. Hearing Closed To the Public. At the request of Student, the hearing will be closed to the public.

14. 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.

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

IT IS SO ORDERED.

DATE: June 26, 2015

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings