BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT,	OAH Case No. 2016020807 (Primary)
PARENT ON BEHALF OF STUDENT, v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016080223 ORDER FOLLOWING PREHEARING CONFERENCE ON EXPEDITED AND NON-EXPEDITED CLAIMS

Adrienne L. Krikorian, Administrative Law Judge, Office of Administrative Hearings, held a telephonic prehearing conference on the consolidated cases regarding both expedited and non-expedited claims on August 12, 2016. Attorneys Christy Fieroli and Ben Conway appeared on behalf of Student. Attorney Daniel Gonzalez appeared on behalf of William S. Hart Union High School District (District.) The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order.

1. Hearing Dates, Times, and Location. The hearing on both the expedited and non-expedited claims shall begin on August 23, 2016 at 9:30 a.m. The hearing will continue August 24-25, August 29-September 1, 2016, and continuing day to day Monday through Thursday, at the discretion of the ALJ. The first day of hearing shall begin at 9:30 a.m. The hearing on August 29, 2016 shall begin at 1:30 p.m. unless otherwise ordered by the ALJ. All other hearing days will begin at 9:00 a.m., unless otherwise ordered.

The hearing shall take place at District's offices located at 21380 Centre Parkway, Santa Clarita, California 91350. Counsel for the parties shall be in the hearing room and prepared to begin the hearing at the scheduled start time.

District shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws

governing accessibility of government facilities to persons with disabilities. District has certified that the facilities used for this case comply with the law. District shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be reserved and used for each day of hearing and shall be available to the ALJ at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. District shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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. The issues at the due process hearing, and the proposed resolutions, are listed below.

A. *Student's Unexpedited Issues – OAH Case Number 2016020807*[1]

1) Did District deny Student a free appropriate public education and deprive Student's parents the opportunity to meaningfully participate in the development of Student's individualized educational programs from February 2014 to September 3, 2015, by:

a) Failing appropriately assess Student in all areas of suspected disability, specifically functional behavior, emotional disturbance, and an assessment by a psychiatrist or clinical psychologist to determine Student's medically related disabilities;

[1] OAH Case No. 2016020807 states both expedited and non-expedited claim and is subject to a dual hearing and decision timeline. The expedited hearing in OAH Case No. 2016020807 began on March 22 2016, and the Expedited Decision issued on April 18, 2016. The expedited claims, hearing and issues in OAH Case No. 2016020807 shall be referred to as the First Expedited Claims, First Expedited Hearing and First Expedited Decision, to distinguish those claims, hearing and decision from the newly-stated expedited claims in OAH Case No. 2016080223, which shall be referred to as the Second Expedited Claims.

b) Failing to make a determination of whether Student required additional evaluations and or failing to notify Parents that it had determined Student required no additional evaluations;

c) Failing to convene an IEP meeting during the spring of 2014 to review and revise Student's IEP in response to his lack of anticipated educational progress;

d) Failing to accurately report Student's present levels of performance in his January 27, 2015 and April 17, 2015 individualized education programs;

e) Failing to develop appropriate emotional and behavioral goals to address Student's unique needs in his January 27, 2015 IEP; and

f) Failing to implement Student's IEPs by failing to timely provide Educationally Related Intensive Counseling Services in conformity with his IEPs; and

g) Failing to have all required staff present at IEP meetings?

2) Did District deny Student a FAPE from February 2014 through August 2014 and from January 27, 2015 until District initiated a disciplinary change of placement in August 2015, by failing to offer and provide Student with:

a) An appropriate educational placement in the least restrictive environment; and

b) Appropriate educationally related services and supports, including a separate resource room or itinerant services, and ERICS or other psychological counseling?

3) Did District deny Student a FAPE September 3, 2015, through February 18, 2016, by:

a) Failing to generate a timely assessment plan, conduct a timely assessment, and convene a timely IEP meeting to discuss the assessment;

b) Failing to notify Parents that it refused to assess Student;

c) Failing to convene an IEP meeting in response to Parents' September 3, 2015 request for an IEP meeting;

d) Failing to offer or provide Student with an appropriate educational program and related services?

e) Failing to maintain and timely provide Parents access to all of Student's educational records?

Student's Issue 8 of his complaint in OAH case number 2016020807 complaint raises claims of violations of Student's civil rights arising under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Section 1983 of the Civil Rights Act of 1871, the California Constitution, California Government Code section 11135, and the Unruh Civil Rights act. Those claims are outside of OAH jurisdiction because they do not arise out of title 20 United States Code section 1415, and are dismissed.

The ALJ will review the non-expedited claims in Student's Case Number 2016020807 on the first day of hearing. Any specific issues raised in Student's Case Number 2016020807 that are not included in the agreed-upon statement of issues on the first day of hearing shall be deemed withdrawn.

Proposed resolutions: placement in an appropriate educational program; compensatory education; an independent educational evaluation in the area of social emotional behavioral functioning at District expense.

B. *Student's Expedited Claims – OAH Case Number 2016080223*

1) Did District violate Student's rights under title 20 United States Code section 1415(k)(1)(E) when it determined that Student's behavior on August 25, 2015, was not the manifestation of his disabilities?

2) Did District violate Student's rights under title 20 United States Code section 1415(k)(1)(D)(ii) and title 34 Code of Federal Regulations section 300.530 when it failed to provide him with a functional behavior assessment or behavioral intervention services designed to address the August 25, 2015 behavior violation so that it did not recur?

3) Did District violate Student's rights under title 20 United States Code section 1415(k)(1)(D)(i) and title 34 Code of Federal Regulations section 300.530, from September 3, 2015 through February 18, 2016, after it removed him from his placement in connection with the August 25, 2015 behavior, when it failed to provide him with an appropriate educational program and related services, so as to enable him to continue to participate in the general education curriculum although in an another setting, and to progress toward his IEP goals,?

Proposed remedies include an order finding: a) the August 25, 2015 behavior was a manifestation of Student's disability; b) expunging Student's expulsion and Student's records relating to expulsion; c) returning Student to an appropriate educational placement; d) a functional behavioral assessment; and e) staff training relating to disciplinary actions under the IDEA.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted in this order or otherwise ordered by the ALJ, 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). **Student shall begin numbering exhibits at Exhibit S60. District shall begin numbering exhibits at D21. Exhibits for both the Second Expedited Claims and the non-expedited issues stated in OAH case number 2016020807 shall be included in the binders.**

The original exhibits from the First Expedited Hearing will be provided by the ALJ for the witnesses. The parties shall not include duplicates of those exhibits in the binders for the upcoming hearing.

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 shall not serve exhibits on OAH prior to the hearing.

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. Each exhibit shall consist of one document; separate documents may not be combined into one exhibit.

Excerpts of an audio record of an individualized education program team meeting, if any, should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a certified court reporter. If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s).

The parties shall exchange resumes for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes and curriculum vitae not later than 24 hours before the witness is scheduled to testify. If resumes were admitted during the First Expedited Hearing, the parties are not required to provide duplicates unless circumstances have changed with the witness' credentials.

District shall include as part of its exhibits the school calendar(s) for all of the years at issue, including the 2016-2017 school year. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), District shall serve a copy of the school calendar(s) and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ not later than the first day of hearing.

The parties shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties are not required to renumber exhibits if exhibits are removed from their respective binders.

Student's request to use portions of the transcript from the First Expedited Hearing shall be considered by the ALJ on a case by case basis during hearing. To the extent that Student desires to refresh a witness's recollection or impeach a witness using specific portions of the transcript, Student shall ensure that a copy of relevant pages are provided to District's counsel, and to the ALJ. The entire transcript itself shall not be offered into evidence as an exhibit as it is already part of the official record.

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 no later than close of business on August 19, 2016, as to the schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed hour by hour witness schedule for the entire hearing which shall include an accurate and reasonable estimate of time for each side's direct and cross examination. **The schedule of witnesses shall specifically identify the issues to which the witness will testify, including whether the issues are expedited and non-expedited.** Where possible, the parties should make reasonable efforts to have witnesses who will testify to the Second Expedited Claims appear before witnesses who will testify only to the non-expedited issues.

Student has identified both Student's attorneys and District's attorney as witnesses. The parties shall meet and confer before the first day of hearing regarding proposed testimony by counsel for the parties, including entering into stipulations regarding facts and authentication of documents authored by counsel. Stipulations regarding counsel's testimony or authentication of documents shall be presented to the ALJ in writing signed by counsel for both parties before the record closes.

The ALJ will consider admitted exhibits, testimony and findings of fact from the First Expedited Hearing and Decision. The parties may, but are not required to, rely on that prior testimony where applicable for the sake of efficiency.

The District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared at the end of each day of hearing to discuss the witnesses to be presented the next day and the time the testimony of each such witness is expected to take.

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.

Prior to the commencement of the due process hearing, 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. 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.

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.

The ALJ will consider any requests for telephonic testimony on or after the first day of hearing, after the parties have met and conferred and developed a witness schedule.

7. Electronic Recording of Hearing.

a. Audio Recording. Either party may make an audio recording of the hearing as a courtesy and subject to the following conditions: 1) OAH's recording is the only official recording; 2) 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; 3) operation of the party's recording mechanism will not be allowed to delay the hearing; 4) the recording shall not be played or published for a prospective witness; 5) the recording shall not be used for any purpose other than assisting in the representation and presentation of this due process hearing; 6) the parties shall erase, or otherwise destroy, the recording after the hearing and all

opportunities for appeal from any decision herein has been exhausted; and 7) the parties shall not use this recording in any subsequent due process 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. 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].) Here, Student is the petitioning party. Accordingly, except as provided in paragraph 5 above, Student shall present his case-in-chief, followed by District.

9. Motions. 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 August 12, 2016.

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 signed by counsel for both parties.

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 mediation or hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known.

Additional information concerning requests for reasonable accommodation is available on OAH's website at: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

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.

This hearing involves expedited issues that are simultaneously scheduled for hearing with non-expedited issues. OAH will not vacate hearing dates upon receipt of written notice of settlement subject to board approval unless Student withdraws his expedited claims in writing. If the parties settle subject to board approval, Student shall provide OAH with a notice of settlement subject to board approval; provide the date of the next scheduled board meeting; include a request for a status conference; and Student shall expressly withdraw all expedited claims. Without a written withdrawal of the expedited claims, the expedited issues shall go to hearing as scheduled.

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

IT IS SO ORDERED.

DATE: August 12, 2016

DocuSigned by:
Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings