BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TORRANCE UNIFIED SCHOOL DISTRICT AND CAROUSEL SCHOOL.	OAH CASE NO. 2012120476 ORDER FOLLOWING PRE-HEARING CONFERENCE

On July 12, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Clifford H. Woosley, Office of Administrative Hearings (OAH). Geoffrey Berkin, Attorney at Law, appeared on behalf of Student (Student). Geoffrey Winterowd, Filarsky & Watt LLP, appeared on behalf of Torrance Unified School District (District). Special Education Director Nelly Chavez was available to appear on behalf of named respondent Carousel School (Carousel), if necessary. The PHC was recorded.

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

1. Proper Parties for Due Process Hearing: The parties discussed the appropriateness of Carousel's appearance as a party respondent. The counsel for Student and District acknowledged that Carousel is a nonpublic school (NPS). As an NPS, Carousel is not a proper party to a due process proceeding because it is not a "public agency." (See Ed. Code, § 56501, subd. (a).) Accordingly, Carousel is dismissed as a party and Ms. Chavez was excused from participation in the PHC.

2. Hearing Dates, Times, and Location. The hearing shall take place on **July 16, 17, and 18, 2013**, at10:00 AM the first day and 9:30 AM all other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

The hearing shall take place at the **District's Educational Materials Building, 2336 Plaza Del Amo, Torrance, CA 90509.**

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. Student's issues for hearing are:

(1) Did District deny Student a free appropriate public education (FAPE) by failing to offer appropriate speech and language services in Student's February 2012 Individualized Education Program (IEP)?

(2) Did District fail to provide speech and language services in accordance with the Student's IEP and, if so, did such failure amount to a denial of FAPE to Student?

(3) Was the speech and language therapist who provided Student with speech and language services a proper provider of such services and, if not, did District therefore deny Student a FAPE?

NOTE: Student's counsel is ordered to provide the date of the IEP to which Issue 2 refers, at the commencement of hearing.

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. Each exhibit binder shall contain a detailed table of contents. 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 are required to serve their evidence binders on each other in compliance with Education Code section 56505, subdivision (e)(7). (See Paragraph 8, hereinbelow.) 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 timely 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 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 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 are ordered to meet and confer for purposes of preparing a schedule of witnesses to be presented to the ALJ on the first day of hearing. 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 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

6. 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. If a witness is to be called by more than one party, the parties need be prepared to examine the witness when first called. Except on a motion and good cause shown, a witness will appear and testify 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.

8. Timely Disclosure of Witnesses/Exhibits. Education Code section 56505, subdivision (e)(7), provides for disclosure of witnesses and exhibits "at least" five business days prior to the hearing. Parties represented that they exchanged the exhibits. District shall make such objection, if at all, at the commencement of the first day of hearing. Otherwise, such objections are deemed waived.

9. Order of Presentation of Evidence. Student is the petitioner, bears the burden of proof, and will first present evidence as to his issues, to be followed by District's presentation of evidence.

10. Motions. District filed a motion to limit the due process issues to a relevant time period, generally citing the delay of Parent in obtaining a conservatorship over Student, who turned 18 years of age on April 24, 2012. The written motion is supported by more than 30 pages of exhibits, including an IEP, communications with District, and communications from District's attorneys.

The District's motion requires consideration of substantial documentary evidence and, perhaps, witness testimony. Accordingly, ruling on the motion is deferred until after the presentation of evidence at hearing.

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, and other electronic devices shall be shut off or set to vibrate during the hearing unless permission to the contrary is obtained from the ALJ. No party may record the proceedings unless the ALJ grants permission to do so.

13. 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.

14. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services.

15. Hearing Closed To the Public.

16. 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.

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

IT IS SO ORDERED.

Dated: July 12, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings