BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. EAST WHITTIER CITY SCHOOL DISTRICT,	OAH Case No. 2015050689
EAST WHITTIER CITY SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015020617 ORDER FOLLOWING PREHEARING CONFERENCE

On August 17, 2015 a telephonic prehearing conference was held before Administrative Law Judge Sabrina Kong, Office of Administrative Hearings. David Grey, Attorney at Law, appeared on Student's behalf. Jeremy Rytky and Darin Barber, Attorneys at Law, appeared on District's behalf. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on August 25, 26, 27, 31, 2015, and September 1, 2015, continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m. and end at 4:30 p.m. with the exception of the first day of hearing, on which day the hearing shall begin 9:30 a.m., and August 31, 2015, on which day the hearing shall begin 1:30 p.m. unless otherwise ordered. The hearing shall take place at District's offices located at 8036 S. Ocean View Avenue, Whittier, CA 90602.

District 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. § 701 et seq.), 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 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 are as follows:

Student's Issues:

a. Did District deprive Student of a free appropriate public education by failing to properly assess Student: (i) by not using an audiologist; (ii) by not complying with the instructions contained within the assessment tools utilized; (iii) by not considering Student's deaf and hard of hearing needs; and (iv) failing to fund an independent evaluation; and

b. Did District deprive Student of a FAPE by failing to consider or address Student's deaf and hard of hearing needs at the December 2, 2014 individualized educational program team meeting?

Student's proposed resolutions are that District (1) fund independent educational evaluations in deaf and hard of hearing, auditory-verbal therapy, and audiology; (2) fund and reimburse auditory-verbal therapist services to Student, including travel expenses; (3) convene an IEP team meeting to address Student's deaf and hard of hearing needs including considering low incidence equipment, audiological services and goals; (4) provide a pre-kindergarten placement with appropriate services and support; (5) reimburse Parents for costs for private school placement and educational services; and (6) make Student eligible for special education under the deaf and hard of hearing category.

District's Issue:

a Is District's Initial Multidisciplinary Developmental Evaluation in the academics, health, intellectual development, language and speech communication development, motor development, social/emotional and adaptive behavior, with a report dated December 2, 2014, appropriate such that she is not entitled to a public funded IEE?

District's proposed resolutions are that OAH declare that District's assessments are appropriate and that District is not required to fund any independent evaluations for Student.

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 represent that they 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.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials.

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 by August 18, 2015, as to the schedule of witnesses and present a witness schedule at hearing pursuant to the example below, 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.

Example:

The following witnesses will be called to testify on August 25, 2015:

1. Jane Smith at 10:00 a.m.
2. Bob Jones at 11:00 a.m.

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.

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. No telephonic testimony was contemplated by the parties at the PHC. 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.

7. 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.

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student's evidence followed by District's evidence. However, witnesses to be called by both sides shall be questioned on all issues when first called.

9. Motions. No motions were contemplated by the parties at the PHC. Any motion other filed after today 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 August 17, 2015 PHC.

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

11. 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.

12. 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.

13. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for translation services. 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, the OAH ADA Coordinator at OAHADA@dgs.ca.gov, or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

The parties requested and were permitted to make only an auditory recording of the hearing subject to the following conditions: (i) They shall turn on and off the recording device at the same time that the ALJ is on and off the record; (ii) They shall not play any part of the recording for a prospective witness; (iii) They shall not publish or play any part of the recording for any purpose other than assisting in the representation and presentation of this hearing; (iv) They shall erase, or otherwise destroy, the recording after the hearing and all opportunities for appeal from any decision herein has been exhausted; and (v) They shall not use this recording in any subsequent due process hearing. The recording is not the official record and is permitted as a courtesy.

14. Hearing Closed To the Public.

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.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement as noted above, the parties shall submit a request for a status conference and provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

DATE: August 17, 2015

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings