**BEFORE THE**
**OFFICE OF ADMINISTRATIVE HEARINGS**
**STATE OF CALIFORNIA**

# IN THE MATTER OF:

# PARENT ON BEHALF OF STUDENT,

**v.**

# TORRANCE UNIFIED SCHOOL DISTRICT.

# OAH CASE NUMBER 2019011024

## ORDER FOLLOWING PREHEARING CONFERENCE

On July 8, 2019, Administrative Law Judge Clifford H. Woosley, Office of Administrative Hearings, held a telephonic prehearing conference. The Administrative Law Judge will be referred to as an ALJ. The Office of Administrative Hearings will be referred to as OAH. Prehearing Conference will be referred to as PHC.

Bruce Bothwell, Attorney at Law, appeared on behalf of Student. Gabrielle Ortiz, Attorney at Law, appeared on behalf of Torrance Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

## HEARING DATES, TIMES, AND LOCATION

### DUE PROCESS HEARING

The hearing will take place on **July 16, 17, and 18, 2019,** and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM on the first day of the hearing and at 9:00 AM on all other days, unless otherwise ordered.

## HEARING LOCATION

The hearing will be held at **Torrance Unified School District, 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.

Torrance Unified's facilities shall fully comply 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 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. Districts are required to file written certification with OAH that the facilities districts provide comply with these laws.

Counsel for Torrance Unified has verbally assured the undersigned that the facilities to be used for this case comply with the law and shall file the required certification of compliance no later than July 10, 2019, at 5:00 pm. Torrance Unified shall inform OAH within two days of the date of this Order if it is unable to provide facilities which comply with this Order.

Before the beginning of the hearing, Torrance Unified shall ensure that the hearing room is configured into a courtroom setting and shall contain:

- a table for Student and his representatives;

- a table for NAME'S legal representative and special education representative;
- a table for the witness;
- a table for the ALJ, near an electrical outlet with a chair that adjusts to an appropriate height for typing at the table provided; and
- water and tissue available for the participants.

The same hearing room shall be used for each day of hearing and shall be available at least one hour before the beginning of the hearing each day. The hearing room shall be locked following the hearing each night. Torrance Unified shall ensure that the hearing room and access to it are in compliance with the all laws governing accessibility of government facilities to persons with disabilities.

Torrance Unified shall also ensure that one parking space is available on each hearing day for each of the following: the ALJ, Parents, Student's attorneys, Torrance Unified's attorneys, and witnesses.

## ISSUES AND PROPOSED RESOLUTIONS

The issues at the due process hearing, and proposed resolutions, as alleged in the complaint and clarified by the parties and the ALJ during the prehearing conference are:

### ISSUES

1. Did Torrance Unified deny Student a free appropriate public education, also called a FAPE, in the least restrictive environment, in the individualized education programs, also called IEP's, dated January 26, 2017 and March 27, 2017, as amended, by failing to:

a. Timely conduct a triennial assessment and timely convene a timely annual and triennial IEP meeting, which was a procedural violation;
b. Offer appropriate behavior services;
c. Offer appropriate speech and language therapy;
d. Offer appropriate specialized academic instruction;
e. Prevent Student from being subjected to bullying;
f. Materially implement the IEP's modifications and accommodations; and or
g. Offer appropriate goals in behavior, academics, socialization, and communication?

2. Did Torrance Unified deny Student a FAPE, in the least restrictive environment, in the IEP dated January 22, 2018, as amended, by failing to:
    a. Offer appropriate behavior services;
    b. Offer appropriate speech and language therapy;
    c. Appropriate specialized academic instruction;
    d. Prevent Student from being subjected to bullying;
    e. Materially implement the IEP's modifications and accommodations; and or
    f. Offer appropriate goals in behavior, academics, socialization, and communication?
3. Did Torrance Unified deny Student a FAPE, in the least restrictive environment, in the IEP's dated December 12, 2018 and January 17, 2019, as amended, by failing to:
    a. Offer appropriate behavior services;
    b. Offer appropriate speech and language therapy;
    c. Appropriate specialized academic instruction;

d. Prevent Student from being subjected to bullying;
e. Materially implement the IEP's modifications and accommodations; and or
f. Offer appropriate goals in behavior, academics, socialization, and communication?

### PROPOSED RESOLUTIONS

The resolutions requested by Student include:

1. Intensive individual behavior therapy program provided and supervised by a nonpublic agency experienced in working with autistic children, on a year-round basis. Reimbursement for privately funded therapy and compensatory behavior therapy,
2. Daily individual academic instruction. Reimbursement for privately funded academic instruction, including Lindamood-Bell services. Compensatory individual academic instruction.
3. An independent speech and language evaluation and appropriate speech and language therapy,

Torrance Unified filed its response to Student's complaint on February 7, 2019. (*M.C. v. Antelope Valley Unified School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1199-1200.)

## EXHIBITS

### BINDERS

Exhibits shall be pre-marked and placed in three-ring binders before the hearing. Exhibit binders shall include a tab for each exhibit. Each binder shall contain a detailed table of contents which clearly identifies the tabs and documents. The ALJ and

witnesses must be able to easily turn to exhibit tabs and to turn pages in the binders. Multiple binders may be submitted if necessary.

### TAB AND PAGE NUMBERS

The parties shall place a letter followed by a number on each tab to identify each exhibit. Student shall use the letter S before the number to identify Student's exhibits. Torrance Unified shall use the letter D before the number to identify its exhibits. For example, S-1 means Student's exhibit tab 1 and D-1 means Torrance Unified's exhibit tab 1. Each page of each binder shall be numbered consecutively from the first page of the first exhibit to the last page of the last exhibit in the binder. Parties may use a Bates-stamp type system for numbering.

### CONTENT

Each exhibit shall consist of one document. Separate documents may not be combined into one exhibit. Emails or letters may be consolidated into one exhibit if they are part of a single chain of messages. Documents offered as evidence to support a request for reimbursement must be separated by vendor and should be internally chronological where possible. Exhibits in the binders should be in chronological order.

Parties should include resumes or curriculum vitae 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 not later than 24 hours before the witness is scheduled to testify.

Torrance Unified's binder shall include a color copy of the school calendar for each school year in question and shall have witnesses available to explain the calendar if necessary.

### COPIES OF BINDERS

The parties shall serve copies of their evidence binders on each other. This exchange is required by Education Code section 56505, subdivision (e)(7). Each party shall bring two additional sets of the binders containing their exhibits to the hearing. One set will be used by the ALJ, and the other set will be used by witnesses. The parties may not serve exhibits on OAH before the hearing.

Except for good cause shown, or unless used solely for rebuttal or impeachment, any exhibit not timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

## WITNESSES

Each party is responsible for producing their own witnesses unless otherwise ordered by the ALJ. Each party shall make witnesses under their 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 timely disclosed except for good cause shown, and at the discretion of the ALJ.

Student shall identify the Torrance Unified employee witnesses who he intends to call to testify at hearing by close of business, **July 9, 2019**. Torrance Unified will then notify Student of any identified witness, who is no longer employed or cannot otherwise be produced by Torrance Unified, along with the witness's most recent residential address, by close of business, **July 10, 2019**.

The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Education Code, section 56505.1, subd. (h), empowers

the ALJ to set a reasonable limit on the length of the hearing after consideration of four factors. The first two factors are the issues to be heard and the complexity of facts to be proven. The second two factors are the ability of the parties or their representatives to present their respective cases and the parties' estimates of the time needed to present their cases.

## MEET AND CONFER

The parties are encouraged to review and shorten their witness and exhibit lists before the hearing. 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 no later than close of business, **July 12, 2019**. The parties shall discuss the availability of witnesses, the order of witnesses and the length of witness testimony. The parties should attempt to eliminate duplicate exhibits from their binders. The parties may discuss whether they can produce a written stipulation stating basic facts to shorten the length of time needed for the hearing.

## EVIDENCE PRESENTATION

In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62.) In this case Student requested the hearing and shall present their case-in-chief first, followed by Torrance Unified.

### WITNESS LISTS

The parties shall give the ALJ a joint proposed witness list for the first day of hearing. The list should include dates and time estimates of expected testimony. In the event an agreement cannot be reached, each party shall prepare a separate written list.

Torrance Unified shall have witnesses available in case there is no agreement. Before the hearing begins, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses. The ALJ will finalize the witness schedule. Parties shall be prepared at the end of each day to discuss the witnesses to be presented the next day and the estimated time the testimony each witness is expected to take.

### SCOPE OF WITNESS EXAMINATION

Each witness shall be called to testify only once, except for rebuttal purposes. All parties shall examine witness on all issues when the witness is first called. Requiring a witness to appear only once takes precedence over the order in which a party presents their case in chief.

### 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 request for leave to do so before the hearing, unless the opposing party has stipulated that the witness may appear by telephone. The party offering the witness shall provide the witness with a complete set of exhibit binders from all parties before the hearing. The binders must be exact paper copies of all of each party's exhibits. Electronic copies are not acceptable. The party presenting the witness shall ensure the witness testifies from a private location with no other persons present. The party offering telephonic testimony shall ensure that the witness has telephone equipment that allows clear testimony at a volume that allows clear transmission of what the witness is saying, allows the witness' testimony to make a clear recording, and allows the witness to hear objections and rulings. Torrance Unified shall ensure that the hearing room has telephone speaker equipment that allows everyone in

the room to hear the witness, and allows the witness to hear objections and rulings. No witness will be heard by telephone unless all these requirements have been fulfilled.

Torrance Unified stated if is finalizing its witness list and schedule and some witnesses may need to testify telephonically. Torrance Unified will inform Student's counsel as soon as it determines those witnesses who will testify telephonically and make a formal request of the ALJ at the beginning of the hearing to present telephonic testimony.

## ELECTRONIC RECORDINGS

### Audio Recording

A party may request permission to make an audio recording of the hearing. Permission to make an audio recording is subject to the ALJ's discretion and based upon certain conditions. Such requests are routinely granted on the following conditions:

- the OAH recording is the only official recording;
- the parties shall turn the recording device on and off at the same time that the ALJ is on and off the record to avoid recording conversations while off the record;
- the recording device will be removed by the party recording during any recess where the party leaves the room;
- operation of the party's recording mechanism will not be allowed to delay the hearing;
- a parties' recording may not be used to prepare the testimony of a witness in the hearing;
- the recording shall not be shared with any non-party, possible witness, or through social media;

- the parties shall not use the recording in any subsequent due process hearing;
- the recording is subject to the same confidentiality as the due process hearing; and
- the parties shall dispose of the unofficial recording when the time for filing an appeal has passed or, in the event of an appeal, when the time for submission of the record on appeal has passed.

Neither party asked for permission to record the hearing. Should either party seek to record the hearing, they shall make the request before the hearing.

**Video Recording**

No party, witness or anyone else may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

### COMPENSATORY EDUCATION OR REIMBURSEMENT

Any party seeking reimbursement for expenditures shall present admissible evidence of these expenditures, or a stipulation to the amount of the expenditures. A party seeking compensatory education should provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

## MOTIONS

No prehearing motions are pending or contemplated. Any motion that was not filed three business days before the Prehearing Conference, shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not timely filed.

## STIPULATIONS

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

## 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, recorders, and other noisemaking electronic devices shall be shut off or set to vibrate during the hearing unless the ALJ grants permission otherwise. No food or drinks other than water will be permitted in the hearing room during the hearing.

## LANGUAGE INTERPRETERS AND REASONABLE ACCOMMODATIONS

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in a mediation or hearing may contact OAH at (916) 263-0880, or send an email to OAHADA@dgs.ca.gov as soon as the need is known. The e-mail should have "Request for Accommodation" in the Subject Line. Additional information concerning requests for reasonable accommodation is available on OAH's website at: https://www.dgs.ca.gov/OAH/Services/Page-Content/Office-of-Administrative-Hearings-Services-List-Folder/Accommodations-at-OAH.

Neither party is aware of a participant or witness who requires accommodations at the hearing.

## HEARING CLOSED TO THE PUBLIC

The hearing is closed to the public.

## 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 if 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. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 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.

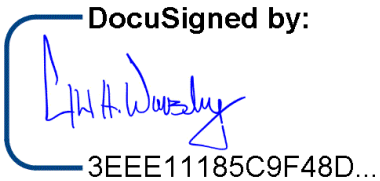
Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

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

## FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

## IT IS SO ORDERED.




DATED: July 08, 2019

Clifford H. Woosley
Administrative Law Judge
Office of Administrative Hearings