BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. WILLIAM S. HART UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2016020807 ORDER FOLLOWING EXPEDITED PREHEARING CONFERENCE

On Monday, March 14, 2016, a telephonic prehearing conference was held before Administrative Law Judge Ted Mann, Office of Administrative Hearings. Christy Ferioli, Attorney at Law, and Ben Conway, Attorney at Law, appeared on behalf of Student. Daniel Gonzalez, Attorney at Law, appeared on behalf of William S. Hart Union High School 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 shall take place on March 22-24, 2016, and March 28-29, 2016, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 21380 Centre Pointe Parkway, Santa Clarita, CA 91350. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, except March 28, 2016 when the hearing will begin at 1:30 p.m., unless otherwise ordered.

As ordered in the scheduling order, the named local educational agency 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. The named local educational agency has certified that the facilities used for this case comply with the law.

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 used for each day of hearing and shall be available 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. Expedited Issues and Proposed Resolutions. The issues at the due process hearing, and the proposed resolutions, are listed below.

Expedited Issues[1]:

1) Did District violate Student's rights under the IDEA when it determined that Student's behavior on January 27, 2015 was not the manifestation of his disabilities or District's failure to implement his individualized education program?

2) Did District violate Student's rights under the IDEA when it removed Student from his educational placement at Placerita for approximately two months in the spring of 2015 while it pursued expulsion proceedings?

3) Did District violate Student's rights under the IDEA when it failed to provide him with a functional behavior assessment or behavioral intervention services designed to address the January 27, 2015 behavior violation so that it did not recur?

4) Did the District fail to comply with the provisions of Title 20 United States Code section 1415(k) following an incident on August 25, 2015?

Proposed Resolutions:

An Order finding that Student's conduct on January 27, 2015 and August 25, 2015 was a manifestation of his disabilities, that Student's expulsion from District be reversed and expunged from his educational records, that District issue a press release acknowledging that it violated Student's rights under the IDEA, that District fund a functional behavioral assessment of Student, that District develop and implement an appropriate behavioral intervention plan for Student, and that District return Student to an appropriate placement in a District school.

[1] Student also raises non-expedited issues in his request for due process, as well as issues that appear to fall outside the jurisdiction of the Office of Administrative Hearings in IDEA due process matters, but those issues are reserved for such due process proceedings as shall follow the expedited hearing and expedited decision.

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 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 may not serve exhibits on OAH prior to the hearing.

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, subd. (e)(7), the parties shall exchange resumes and curriculum vitae not later than 24 hours before the witness is scheduled to testify. Resumes may be collectively included under one exhibit tab.

District shall include as part of its exhibits the school calendar(s) for the years at issue. 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 binders.

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 the close of business on Friday, March 16, 2016, as to the schedule of witnesses, 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.

On the first day of hearing, the parties shall provide the ALJ with a detailed hour by hour witness schedule which shall include an estimate of time for each side's direct and cross examination for the entire hearing. 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.

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.

Good cause having been found, Student's motion to allow witnesses Irene Nunez and Elizabeth Lashley-Haynes to testify telephonically is granted. Student shall provide both Ms. Nunez and Ms. Lashley-Haynes with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, shall ensue that the witness has a private, quiet location from which to testify, shall ensure that the witness has a landline, 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.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: 1) that OAH's recording is the only

official recording; 2) that 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; and 3) that 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. District may also make an audio recording of the hearing at its discretion, subject to the conditions related above.

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, Student shall present its case-in-chief, followed by District, except to the extent that considerations related to the scope of witness examinations control, as explained in paragraph 5, above.

9. Motions. Student's motion to allow witnesses Nunez and Lashley Haynes to testify telephonically is granted, as further described and explained above. Student's motion to be permitted to make an audio recording of the hearing is granted, subject to the conditions related, above. No other 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 March 14, 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.

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. No special needs or accommodations for any participant in the hearing are contemplated by either party.

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/Accommodations.aspx

14. Hearing Closed To the Public. The hearing will be 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 parties settle the matter 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. OAH will not cancel the hearing dates without this information.

Because this is an expedited hearing, OAH will not vacate the hearing dates if a settlement is reached subject to board approval. Student must either withdraw the expedited claim, or proceed to hearing.

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

IT IS SO ORDERED.

DATE: March 15, 2016

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings