BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CONTRA COSTA COUNTY OFFICE OF EDUCATION AND CONTRA COSTA COUNTY PROBATION DEPARTMENT.	OAH CASE NO. 2013080462 ORDER FOLLOWING PREHEARING CONFERENCE

On September 16, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Peter Paul Castillo, Office of Administrative Hearings (OAH). Mary Lee Smith and Rebecca Williford, Attorneys at Law, appeared on behalf of Student. Jennifer Rowe Gonzalez, Attorney at Law, appeared on behalf of Contra Costa County Office of Education (CCCOE). Christina Ro-Connolly, Attorney at Law, appeared on behalf of Contra Costa County Probation Department (CCCPD). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing [is continued on motion of /joint motion of the parties and] shall take place on [Date], and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at [Time] a.m./p.m. and end at [Time] a.m./p.m. [with the exception of the first day of hearing, on which day the hearing shall begin at [Time] a.m./p.m.], unless otherwise ordered, at [Time] a.m./p.m.

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. [1]

[1] At a minimum for the hearing in this matter, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for CCCOE's and CCCPD's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. CCCOE shall ensure that all parties and the ALJ have drinking water and tissue available to them.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Issue 1: From on or about June 25, 2012 through July 2, 2012 and July 19, 2013 through August 7, 2012 did CCCOE and CCCPD deny Student a free appropriate public education (FAPE) by failing to:

a) Perform their respective child find duty by not assessing Student for eligibility for special education services;

b) Find him eligible for special education services; and

c) Provide him with special education service services through an individualized education program (IEP)?

Issue 2: Did CCCOE's and CCCPD's IEP of January 7, 2011, deny Student a FAPE because CCCOE and CCCPD failed to:

a) Provide Student with adequate specialized academic instruction, psychological services, and counseling;

b) Provide Student with a behavior intervention plan; and

c) Place Student in a special day class for any of his classroom instruction?

Issue 3: From November 2010 through January 2011, did CCCOE and CCCPD deny Student a FAPE by failing to assess Student in all areas of suspected disability?

Issue 4: Did CCCOE's and CCCPD's IEP's of January 7, 2011 and September 12, 201, deny Student a FAPE because CCCOE and CCCPD failed to:

a) Provide Student with adequate specialized academic instruction, psychological services, and counseling services;

b) Provide Student with a behavior intervention plan;

c) Place Student in a special day class for any of his classroom instruction;

d) Provide Student with assistive technology devices and services;

e) Consider a continuum of placements to meet Student's unique needs; and

f) Include any services in the September 12, 2012 IEP for Student to meet his individualized transition plan goals?

Issue 5: From November 2010 through January 2011 and July 2011 through the present, did CCCOE and CCCPD deny Student a FAPE by failing to:

a) Implement Student's IEP, including providing special education services through paraprofessionals with adequate supervision by a special education teacher; and

b) Provide specialized academic instruction as all students receive the same instruction;

c) Provide Student with special education services while he was in solitary confinement; and

d) Convene manifestation determination meetings when Student was removed from his educational placement for more than ten days, and not conducting a functional behavior assessment as his disciplinary conduct was related to his disability?

Proposed Resolutions: Student requests compensatory education in areas of psychiatric treatment and mental health counseling, including family counseling, positive behavior intervention services and educational therapy, plus transportation to these compensatory services. Student also requests reimbursement for the psychoeducational assessment conducted by X. Finally, Student seeks that CCCOE and CCCPD fund an independent educationally related mental health assessment and a behavioral assessment.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. CCCOE and CCCPD shall prepare a joint evidence binder. The parties shall use numbers to identify exhibits, but shall place the letter "S" or "C" in front of the exhibit to designate if it is a Student or CCCOE/CCCPD exhibit (for example, "S-5, S-6", "C-1, C-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. In compliance with Education Code section 56505, subdivision (e)(7), the parties shall exchange exhibits by 5:00 p.m., on September 17, 2013. 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.

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 September 20, 2013, as to the schedule of witnesses, when a party expects a witness to testify, and have agreed 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. By 1:00 p.m. on September 23, 2013, each party shall serve on the other party and on the ALJ, the final witness list, including the anticipated order of the witnesses to be called at the hearing, an estimate of the length of time for the direct examination of each witness the party actually intends to call, along with time estimates for the testimony of any additional witnesses the party may call, depending on the flow of the hearing and the evidence.[2] 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.

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. 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. 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.

[[Name of party]'s motion to allow [Witness name] to testify telephonically is granted/denied.] [[Name of party] shall provide [Name of party] with a complete exhibit binder from each party, containing all of each party's exhibits, prior to the hearing, and shall

[2] Parties shall not mail a hard copy of any document to OAH that has already been filed by facsimile transmission.

ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.]

7. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student, CCCOE and then CCCPD. If a witness if to be called by more than one party, the parties shall conduct direct and cross-examination so that the witness need only testify once.

9. Motions. [Rulings on motions made at PHC.] [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 [Date].]

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 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. No party requested any special accommodation.

14. Hearing Open/Closed To the Public. [At the request of the parent, the hearing will be open to the public.]

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five business days or fewer before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE

REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

IT IS SO ORDERED.

Dated: September 17, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings