BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. TUOLUMNE COUNTY CALIFORNIA CHILDREN'S SERVICES.	OAH CASE NO. 2012100238 ORDER FOLLOWING PREHEARING CONFERENCE

On April 22, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Bob N. Varma, Office of Administrative Hearings (OAH). Amber C. Lance and Christian M. Knox, Attorneys at Law, appeared on behalf of Student. Donald R. Aron, Attorney at Law, appeared on behalf of the Tuolumne County California Children's Services (Children's Services). 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 May 7 – 9, 2013, and 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 5:00p.m., with the exception of the first day of hearing, on which day the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place on at 20111 Cedar Road North, Sonora, California, 95320, in the Terrace Room.[1]

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 listed below.

[1] Children's Services shall ensure that the room is capable of being set up in a courtroom type of setting. The room shall have a table available for each party, a table for the witness and a table for the ALJ, close to an electrical outlet. Children's Services shall ensure that drinking water is provided for the parties, the witness and the ALJ.

Issue No. 1: Did Children's Services deny Student a free appropriate public education (FAPE) during the 2011-2012 and 2012-2013 school years (SY's), through the present, by:[2]

a. failing to provide Student with adequate physical therapy (PT) services;

b. failing to provide Student with adequate occupational therapy (OT) services;

c. unilaterally reducing Student's PT and OT services outside of the individualized education program (IEP) team meeting process; and,

d. failing to implement services provided for in Student's IEP's?

Issue No. 2: Did Children's Services commit procedural violations that resulted in a denial of FAPE to Student during the 2011-2012 and 2012-2013 SY's, through the present, by:

a. failing to comply with the requirements of the Individuals with Disabilities Education Act as set forth in the issues raised in Student's complaint;

b. failing to actively participate in the IEP team meeting process;

c. unilaterally making decisions outside of the IEP team meeting process; and,

d. failing to consider independent evaluations?

Proposed Resolutions:

Student seeks compensatory education in the form of PT and OT prospective PT and OT as part of her placement and services, an order that Children's Services participate in Student's IEP team meetings and that Children's Services be prohibited from changing Student's services without convening an IEP team meeting.

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 "C" in front of the exhibit to designate if it is a Student or Children's Services exhibit (for example, "S-5, S-6, or C-1, C-2"). Each exhibit shall be internally

[2] This case concerns Student's right and Children's Services obligations under Chapter 26.5 of the Government Code, section 7570 et seq. During the PHC, the parties were directed to the relevant statutory scheme and were given direction to accordingly develop the presentation of their respective cases. The undersigned stressed to the parties that, following the presentation of witness testimony and documentary evidence, this matter will require extensive briefing on the legal issues presented. Both parties should be prepared to submit closing briefs that provide their detailed analysis of Student's rights under Chapter 26.5 of the Government Code, Children's Services obligations and the standard of review to be applied to this matter.

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. 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 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 attempt to reach agreement on a witness list for the first day of hearing. Children's Services 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.

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. At this time, neither party has requested telephonic testimony of a witness.

7. Timely Disclosure of Witnesses/Exhibits. The parties provided OAH and served upon each other a disclosure of witnesses and exhibits prior to the PHC. The parties shall ensure disclosure of witnesses and exhibits consistent with the requirements of Education Code section 56505, subdivision (e)(7).

8. Order of Presentation of Evidence. The order of presentation of evidence shall be as follows: Student shall present her evidence first, followed by Children's Services. If a witness if to be called by more than one party, the parties shall question the witness for each of their case-in-chief to ensure the witness does not need to return.

9. Motions. 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 April 22, 2013.

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.

14. Hearing Closed To the Public. The hearing is closed to the public, unless Student informs all parties and OAH otherwise.

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.

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

IT IS SO ORDERED.

Dated: April 24, 2013

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings