BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017061033
v.	ORDER FOLLOWING PREHEARING CONFERENCE
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On February 2, 2018, a telephonic prehearing conference was held before Administrative Law Judge Rebecca Freie, Office of Administrative Hearings. Jean Murrell Adams, Attorney at Law, appeared on behalf of Student. Amy R, Levine, Attorney at Law, appeared on behalf of Antioch Unified 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 February 13, 14, and 15, 2018, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at Antioch's offices located at 510 G Street, Antioch, California 94509. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered. [1]

As ordered in the scheduling order, Antioch was to 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. § 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. Antioch has failed to certify that it would provide a facility for this case that complies with the law. Antioch shall filed certification that the facility where the hearing will occur complies with the law within two business days from the date of this order.

Prior to the beginning of the hearing, Antioch 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 Antioch's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical

[1] In the case of *M.C. v. Antelope Valley Union High Sch. Dist.* (9th Cir. 2017), 858 F.3d 1189, the court determined that a school district is required to file a response within 10 days after the complaint is filed, and the hearing cannot proceed if this has not occurred. (*Id.* at pp. 1199-2000.) Antioch has complied with this requirement.

outlet. Antioch 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. Antioch shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act. Antioch shall ensure there is a room where Parent and her attorney may confer when necessary.

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, and the proposed resolutions, are listed below.

Issues

1) Did Antioch deny Student a free appropriate public education by failing to make him eligible for special education and related services from at least January 2015 through August 2015?[2]

2) Did Antioch deny Student a FAPE by failing to provide comprehensive assessments in all areas of suspected disability from at least January 2015 through August 2015?[3]

3) Did Antioch deny Student a FAPE by failing to tailor an appropriate educational program to meet his unique needs from at least January 2015 through August 2015?

4) Did Antioch deny Student a FAPE by failing to timely inform Parent of her procedural safeguards, failing to include Parent in the decision-making process regarding a

[2] In his first amended complaint, Student alleged that this occurred between January 15, 2015, and February 2016. At the PHC Antioch was questioned and did not object to the shortened time period pertaining to this issue, and the other three issues. Student understands that he has the burden of proof to establish that one or both exceptions to the two-year statute of limitations for filing a special education due process complaint. (Ed. Code § 56505, subd. (l).)

[3] Student alleged in his first amended complaint that the actionable time period for this issue and the two following issues was from "at least January 2015 to the present." Again, Antioch did not object to the now shorter time period for Issues 2, 3, and 4.

FAPE,[4] and failing to provide prior written notices, thus violating Student's and Parent's procedural rights from at least January 2015 through August 2015?

Proposed Resolutions

1) Antioch shall reimburse Parent for a psychoeducational independent educational evaluation conducted by Dr. Robert Rome.

2) Antioch shall conduct staff training regarding procedural safeguards and parent rights pursuant to the Individuals with Disabilities Education Act, including but not limited to making multiple SST [student study team] meetings a prerequisite to special education assessments, failing to include parents in the decision-making process regarding the need to assess, and failing to provide prior written notices.

3) Antioch shall provide Student with compensatory education in all areas of need, including but not limited to, intensive remedial academic instruction in language arts and mathematics, tutoring services, educational therapy, counseling, and reimbursement for educational and related services.

4) Antioch shall fund all Student attorney fees and costs pursuant to 20 U.S.C. section 1415 (h)(3)(B) [*sic*].

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 exhibit binders shall be consecutively paginated or 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. The parties are encouraged, but not ordered, to provide resumes or curriculum vitae to each other and the ALJ for witnesses testifying in their professional capacity.

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. This provision does not apply to resumes or curriculum vitae.

[4] During the PHC the parties agreed that "decision-making process" referred to the assessment process, given the change of time periods now at issue.

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 timely disclosed except for good cause shown, 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 meet and confer no later than February 9, 2018, to attempt to reach agreement on a witness list for the first day of hearing. Antioch shall have witnesses available in case agreement on a witness list is not reached. Prior to the commencement of the due process hearing, 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, and the ALJ will finalize the witness schedule. Additionally, 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. 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. 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.

Student's expert witness, Dr. Robert Rome is located in Los Angeles, and Student may ask at hearing that he testify telephonically. Student understands that the above conditions will apply if the request is granted.

7. Electronic Recording of Hearing.

a. Audio Recording. Antioch intends to make an audio recording of the hearing and understands that the following conditions shall apply: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as

the ALJ's recorder, 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. If Student desires to make such a recording, Student shall announce its intention to do so in advance, and the same conditions shall apply.

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 Student.

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 filed three business days before the PHC.

Antioch may seek to exclude potential witnesses from the hearing until they have testified. This request was made in reference to Student's grandfather, who, it was asserted, has been a "father-figure" to Student and a participant in the IEP process. Antioch may renew this request at hearing, at which time the ALJ shall make a determination regarding his presence.

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 during the hearing unless permission to the contrary is obtained from the ALJ.

13. Special Needs and Accommodations. The parties do not believe a foreign language interpreter is necessary. Student's grandfather may attend the hearing and may testify, and has medical conditions that may require special accommodations. Student shall notify the clerk if it is determined that special accommodations will be needed for him.

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:

https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

14. Hearing Closed To the Public. The hearing will be closed to the public unless Student requests it be open.

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. ON FEBRUARY 8, 2017, 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT OR A LETTER WITHDRAWING THE CASE TO OAH AT:

https://www.dgsapps.dgs.ca.gov/oah/oahsftweb .

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.

DATE: February 5, 2018

DocuSigned by:
Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings