BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALHAMBRA UNIFIED SCHOOL DISTRICT, WHITTIER UNION HIGH SCHOOL DISTRICT, WHITTIER AREA COOPERATIVE SPECIAL EDUCATION LOCAL PLAN AREA	OAH CASE NO. 2013050780 ORDER FOLLOWING PRE-HEARING CONFERENCE AND DENYING ORAL MOTION FOR VENUE CHANGE

On August 19, 2013, Administrative Law Judge (ALJ) Adrienne L. Krikorian, Office of Administrative Hearings (OAH) held a telephonic prehearing conference (PHC). Attorney Mark Woodsmall appeared on Student's behalf. Attorney Cole Dalton appeared on behalf Alhambra Unified School District (AUSD). Attorney Darin Barber appeared on behalf of Whittier Union High School District (WUHSD) and Whittier Area Cooperative Special Education Local Plan Area (SELPA). 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 August 27, 28, 29, September 3 and 4, 2013, and continuing from day to day Monday through Thursday at the discretion of the ALJ. The hearing shall be held at the District's offices located at 1515 West Mission Road, Alhambra, CA 91803. The hearing shall begin at 9:30 a.m. on all days of hearing, except for September 3, 2013, on which the hearing shall start at 1:30 p.m., unless otherwise ordered by the hearing judge.

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. The issues at the due process hearing are listed below.

a) Did AUSD deny Student a Free Appropriate Public Education (FAPE) during the 2012-2013 school year by failing to assess Student in all areas of suspected need, including behavior and mental health?

b) Did AUSD deny Student a FAPE during the 2012-2013 school year by failing to offer appropriate related services designed to address all of Student's unique needs, including in the areas of behavior, language and speech, social skills, and vocational training?

c) Did AUSD deny Student a FAPE during the 2012-2013 school year by failing to offer an appropriate placement, including one which was safe and free from harassment?

d) Did AUSD deny Student a FAPE during the 2012-2013 school year by failing to offer Student an educational program that was tailored to address Student's unique needs, including use of research-based intervention?

e) Did AUSD deny Student a FAPE during the 2012-2013 school year and deprive Student's parents the opportunity to meaningfully participate in the development of Student's IEP by failing to consider the opinions and findings of Parent's private experts, and failing to consider Parents' concerns?

f) Did AUSD, WUHSD and SELPA deny Student a FAPE by failing to offer or provide Student with any educational program, including supports and related services, since February 6, 2013?

g) Did AUSD, WUHSD and SELPA deny Student a FAPE during the 2012-2013 school year by failing implement Student's individualized education program (IEP) by providing the related services and supports, including counseling, described in his IEP?

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," "D," or "W" in front of the exhibit to designate if it is a Student, AUSD, or WUHSD/SELPA 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. 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 shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders. The parties shall not serve exhibits on OAH prior to the hearing.

The parties shall exchange 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, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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 noon on August 23, 2013, as to the schedule of witnesses. The parties shall provide the ALJ with a detailed schedule which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness when the witness is first called. 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. 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. None of the parties anticipate any telephonic testimony.

7. Motions. WUSD/SELPA made an oral motion at the PHC to change the venue of the hearing to Whittier's Support Center, located at 8501 Painter Avenue, Whittier, California. The basis for the motion was that Student resides in Whittier. AUSD opposed the motion on the ground that most of the witnesses identified by the parties were based in Alhambra. Student did not opposed a change of venue; however, Student's counsel represented that the current location at AUSD's district office was reasonably convenient for the parents, and that Student was not being called as a witnesses. The parties consented on the record to permit the ALJ to rule on the motion without requiring WUSD/SELPA to file a written motion.

A due process hearing must be conducted "at a time and place that is reasonably convenient to the parents and child involved." (34 C.F.R. § 300.515(d); see also, Ed. Code, § 56505, subd. (b).) Here,WUSD/SELPA's grounds for changing venue were not persuasive. Student did not oppose a change of venue, but also represented through his counsel that the original venue was convenient for parents. Additionally, most of the witnesses identified by

both Student and AUSD are based in Alhambra and work in the Alhambra district office. No valid basis exists to change venue. Accordingly, the motion is denied.

Any additional prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of August 19, 2013.

8. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form and signed by counsel for those parties who have reached a stipulation.

9. 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.

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. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter services.

12. Hearing Closed To the Public.

13. 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 matter settles 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. The hearing dates will not be cancelled without this information.

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

IT IS SO ORDERED.

Dated: August 19, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings