BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. TEHACHAPI UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2015040167
TEHACHAPI UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2015050907 ORDER FOLLOWING PREHEARING CONFERENCE

On June 15, 2015, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Andréa Marcus, Attorney at Law, appeared on behalf of Student and Parents (collectively, Student). Vikki Rice, paralegal, was also present on the conference call. Darren J. Bogié, Attorney at Law, appeared on behalf of Tehachapi Unified School District. Heather Richter and Kathleen Siciliani, District administrators, were also present on the conference call. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on June 30, July 1, July 2, July 7, and July 8, 2015, and continue day to day thereafter, Monday through Thursday as needed, at the discretion of the ALJ. Unless otherwise ordered, the hearing shall begin at 9:30 a.m. on June 30, 2015, and at 9:00 a.m. on all other days. (Note that the hearing shall not take place on July 6, as discussed at the PHC, because OAH is holding a staff meeting on that day.)

The hearing shall take place at the District's offices located at 300 South Robinson Street, Tehachapi, California 93561. District shall 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to people with disabilities.

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 was 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.

Student's Issues

Whether District deprived Student of a free appropriate public education from August 14, 2013, through the date of filing Student's Complaint, by reason of the following:

1. Failing to timely and appropriately conduct the triennial psychoeducational assessment of March 6, 2015;
2. Failing to timely and appropriately conduct a behavioral assessment;
3. Failing to include autism-specific behavior therapies in the classroom;
4. Failing to provide a dedicated one-to-one behavioral aide to Student throughout Student's school day; and
5. Failing to provide structured teaching to meet Student's unique needs.

At the PHC, Student withdrew issue 1(a) of the Student's complaint to the extent that it refers to any District assessments other than the above-referenced psychoeducational and behavioral assessment, and issue 1(c) of Student's complaint regarding District's alleged conditional offer of one-to-one aide services in the March 12, 2015, IEP. Student's allegations pertaining to ADA and Section 504 were dismissed.

Student seeks resolution of the above issues, to include (1) District to provide independent educational evaluations in the areas of psychoeducational and behavior; (2) District to provide a one-to-one behavior aide from a non-public agency, with behavior intervention development services; (3) District to invite these individuals to Student's individual education program meetings and compensate them for their time in attending the meetings; and (4) District to provide structured teaching.

District's Issue

1. Whether the speech and language assessment conducted by District in February and March 2015 was appropriate such that Student is not entitled to an independent educational evaluation at public expense.

District seeks an order establishing the foregoing.

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 whether it is a Student or District exhibit (for example, "S-5, S-6, or D-1, D-2"). It is preferred that each party's exhibits be consecutively numbered by Bates stamp or other similar method, commencing with the first page of the first exhibit and ending with the last page of the last exhibit. Alternatively, each exhibit shall be internally paginated by exhibit. Each exhibit binder shall contain a detailed table of contents. The parties shall serve their final exhibit lists and evidence binders on each other by no later than close of business on June 23, 2015, 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.

Unless used solely for rebuttal or impeachment, any exhibit not included in a party's final exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party, except for good cause shown, and at the discretion of the ALJ, and unless the ALJ rules that it is otherwise admissible.

4. Witnesses. The parties shall serve their final witness lists upon each other by not later than close of business on June 23, 2015, in compliance with Evidence Code section 56505, subdivision (e)(7). Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available to the other party without subpoena, upon timely request. 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 final witness list, except for good cause shown, and at the discretion of the ALJ.

The parties are encouraged to review and curtail their witness lists prior to the hearing. Witness testimony will be excluded if it is repetitive, cumulative, or insufficiently probative to justify the time it would take to hear. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

The parties shall attempt to reach agreement on a witness list for the first day of hearing. District shall have witnesses available in case agreement on a witness list is not reached. The parties shall be prepared during each day of hearing to discuss the witnesses to presented that day and the next hearing day, and the time the testimony of each such witness is expected to take.

Except for purposes of rebuttal or impeachment, the parties should expect that each witness shall be called to testify only once.

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, at the discretion of the ALJ.

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. Unless otherwise ordered, the witness shall testify on a land-line telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two parties. The order of presentation of evidence shall be as follows: Student is to present his case first.

8. Motions**.** Prior to the PHC, District filed a motion requesting that evidence that was generated after the date Student filed his complaint be excluded. After hearing argument, the motion was denied without prejudice. Student moved for permission to audio record the hearing. After hearing argument, the motion was denied without prejudice. Student also moved, orally, for the production of certain school staff attendance records for which Student had already served a Public Records Act request. After hearing argument, this motion was denied without prejudice, and the ALJ suggested that any such motion be made in writing, or that the records be sought via subpoena. Except to the extent that the foregoing motions may be renewed at the time of the hearing or prior thereto, as applicable, no other motions are pending or contemplated. Any other motion filed after the date of the Order 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 PHC of June 15, 2015.

9. Stipulations. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in writing.

10. 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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing unless permission to the contrary is obtained from the ALJ.

11. 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.

12. Special Needs and Accommodations. At present neither party anticipates the need for special accommodation for any witness or party, or for interpreter or translation services. A party or participant in this case, such as a witness, who requires reasonable accommodations to participate in the hearing may contact the assigned OAH calendar clerk at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or at (916) 263-0880, as soon as the need becomes known. Additional information concerning a request for reasonable accommodations is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

13. Hearing Closed To the Public. The hearing will be closed to the public.

14. 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 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 or with Education Code section 56505, subdivision (e)(7) may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: June 19, 2015

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings