BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SPENCER VALLEY ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2014120575 ORDER FOLLOWING PREHEARING CONFERENCE OF JANUARY 23, 2015

On January 23, 2015, a telephonic prehearing conference was held before Administrative Law Judge Darrell Lepkowsky, Office of Administrative Hearings. Tania Whiteleather, Attorney at Law, and Amy Langerman, Special Education Consultant, appeared on behalf of Parents and Student. Diane Willis, Attorney at Law, appeared on behalf of the Spencer Valley Elementary School District. 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 starting on February 2, 2015, and continuing day to day thereafter, Monday to Thursday, as ordered by the ALJ, at the Office of Administrative Hearings located at 1350 Front Street, Suite 3005, San Diego, California, 92101. The hearing shall start at 1:00 p.m. on February 2 and at 9:00 a.m. all other days, unless otherwise ordered.

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 in a due process hearing are limited to those identified in the written due process complaint. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) The issues were discussed and clarified during the PHC, and are listed below.

Issue One: Did Spencer Valley deny Parents the right to participate in Student's individualized educational program process at Student's September 25, 2014 IEP team meeting by failing to engage in an interactive and collaborative discussion about Student's then-current behavioral issues and by refusing to respond at the meeting to Student's requests for changes to Student's program?

Issue Two: Between August 18, 2014, and September 25, 2014, did Spencer Valley deny Student a FAPE by failing to address his behavioral needs through appropriate services, supplementary aids, and supports?

Issue 3: As of September 25, 2014, did Student require a behavioral management program that included relationship development intervention (RDI) provided by a highly trained and certified behavioral consultant and an instructional assistant supervised by the consultant, both trained in RDI, in order for Student to receive a FAPE in the least restrictive environment?

Issue Four: Did Spencer Valley deny Student a FAPE by failing to offer a placement and related services that would implement his stay put extended school year program during the summer of 2014?

In addition to prevailing party status on all issues, Student requests the following remedies if he prevails at hearing:

a. Reimbursement for all parentally provided private school expenses and/or compensatory education, according to proof.

b. An order compelling Spencer Valley to amend Student's IEP to identify that his behavioral support related services must be provided by a behavioral consultant certified in RDI; that his instructional aide must be trained in RDI by the behavioral consultant; and that Student's behavioral management program must include RDI as a necessary component, implemented with fidelity.

c. Compensatory education for the failure to make available Student's stay put extended school year placement and services during the summer of 2014.

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"). The parties are encouraged to prepare a joint exhibit binder containing their shared exhibits. 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. The parties shall ensure that all evidence is exchanged no later than five business days prior to hearing, 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. The parties shall informally meet and confer by the close of business on January 29, 2015, to coordinate their witness production and schedules. At the commencement of the hearing, the parties will present their witness schedules, and the ALJ and the parties will discuss the witness schedules, including the length of time anticipated for examination of each witness and any scheduling issues for individual witnesses. 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. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under its control reasonably available. Neither party shall be permitted to call any witnesses not timely disclosed except for good cause shown, and at the discretion of the ALJ.

Student has identified 12 witnesses and Spencer Valley has identified 18 witnesses, 11 of whom will be called by both parties. 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony, to ensure that this matter is concluded within the time allotted, based upon the parties' time estimates and the issues presented.

5. Order of Presentation of Evidence and Scope of Witness Examination. Student bears the burden of proof and shall present his evidence first, followed by Spencer Valley. Where Student and Spencer Valley intend to call the same person to testify, each party will examine the witness immediately after the other party, so the witness will only need to be called to the witness stand once. 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. Only one round of redirect and/or re-cross examination will be permitted, unless otherwise ordered.

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. At present, neither party anticipates the need for telephonic testimony.

7. Motions. The following motions were addressed during the PHC:

a. Student's motion in limine is denied. Student may raise objections to evidence or testimony presented by Spencer Valley at the time it is presented.

b. Student's motion for administrative notice of the prior OAH decisions in which Student was petitioner is granted.

c. Spencer Valley's motions to dismiss issues raised by Student as moot or as having been addressed in the prior case between the parties are denied.

d. Spencer Valley's motion to exclude Ms. Langerman from the hearing until she testifies is denied.

Other than the parties' proposed motion to reinstate the original start state for the hearing, any other 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 January 23, 2015.

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

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 and 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. Ms. Langerman, Student's Educational Consultant, has requested that the hearing be held at the OAH offices in San Diego. OAH set the hearing at the location requested by Ms. Langerman in its scheduling order issued on December 16, 2014.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned calendar clerk at (916) 263-0880, the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning requests for reasonable

accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

12. Hearing Opened or Closed To the Public. Student shall inform the ALJ at the start of the hearing whether he wants the hearing opened or 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.

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

IT IS SO ORDERED.

DATE: January 23, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings