BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. MANTECA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2013080296
MANTECA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013050805 ORDER FOLLOWING PREHEARING CONFERENCE

On August 30, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Charles Marson, Office of Administrative Hearings (OAH). Father appeared on behalf of Student. Daniel A. Osher, Attorney at Law, appeared on behalf of the Manteca Unified 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 at 2271 West Louise Avenue, Manteca, California 95337. It shall take place on September 10, 11, and 12, 2013, and continuing day-to-day thereafter, Monday through Thursday, at the discretion of the ALJ. On September 10, 2013, the hearing shall begin at 10:00 a.m. and end at 5:00 p.m., and on the remaining days the hearing shall begin at 9:00 a.m. and end at 5:00 p.m., 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.

Student's Issues (No. 2013080296):

1. Did the District deny Student a free appropriate public education (FAPE) from February 27, 2013 to the present by:

a) Failing to implement the goals and objectives in Student's February 15, 2013 individualized education program (IEP);

b) Failing to enroll Student in its Home Schooling and/or Independent Study Program;

c) Failing to place Student in the least restrictive environment (LRE); and

d) Denying Student access to specialized instruction and related services?

2. Did the District deny Student a FAPE from May 3, 2013 to the present by offering placement at the Children's Home of Stockton (CHS)?

District's Issue (No. 2013080296)

Did the District's May 3, 2013 IEP, offering placement in CHS, constitute an offer of FAPE in the LRE so that the District may implement it without parental consent?

3. Dismissal of Two of Student's Issues.

a) As his third issue, Student alleges in his amended complaint that placement in Options for Education, Inc. (Options), a non-public school, should be determined not to be suitable for Student. For purposes of retroactive relief, the appropriateness of the District's placement of Student in Options under its February 15, 2013 IEP is addressed in Student's Issue No. 1, above, and to that extent the parties' dispute concerning placement at Options is not moot. However, Parent withdrew Student from Options on February 27, 2013, and the District no longer offers placement in Options, so the dispute between the parties about the appropriateness of some future order of placement of Student at Options is moot. Insofar as it addresses a possible future placement, Issue No. 3 in Student's amended complaint is dismissed as moot. This order does not affect consideration of the appropriateness of placement at Options as it pertains to Student's first issue, including but not limited to its consideration in connection with the District's request made in Spring 2013 that Parent re-enroll Student in Options, and Parent's decision not to do so.

b) As his fourth issue, Student alleges in his amended complaint that an employee of the District engaged in an inappropriate relationship with Student, and that the District breached its duty under state mandatory reporting laws (Pen. Code, §§ 11165.1 and 11165.7) to report that alleged misconduct to proper authorities. In an order filed August 13, 2013, OAH ruled that it lacks jurisdiction over that allegation. Student also alleges that, if it does not have jurisdiction over the claim, OAH now has a duty under Penal Code section 11165.9 to refer the allegation to an agency that does have jurisdiction.

Whether OAH must report Student's allegation of sexual misconduct to an agency having jurisdiction over the allegation is a matter for internal decision by OAH; an OAH ALJ has no jurisdiction to order OAH to make such a report. OAH will determine its duty, if any, in the matter, and will discharge any duty it may have. For the purpose of the hearing in these matters, issue 4 in Student's amended complaint is dismissed for lack of jurisdiction.

4. 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 in a way that makes clear the party offering it (such as "S1" or "D2"). 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. Each party shall serve an exhibit binder containing its respective exhibits on the other party by 5:00 p.m. on September 3, 2013 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.

5. Witnesses.

a) 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. The parties shall schedule their witnesses to avoid delays in the hearing and to minimize or eliminate the need for calling witnesses twice or out of order. Neither party shall be permitted to call any witnesses not disclosed in the party's prehearing conference statement and listed below, except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

b) At present, Student intends to call the following witnesses:

1) Student's Father;

2) Roger Goatcher, senior director of student services;

3) Andrea Littlejohn, service coordinator, regional center; and

4) Janis Peters, program specialist.

c) The District intends to call the above witnesses Goatcher and Peters, and in addition to call the following:

1) Steve Bartles, Teacher, Options;

2) Dr. Jody Browning, program specialist;

3) Mike Dutra, principal, CHS;

4) Anne Romeno, teacher, CHS; and

5) Nathan Varosh, vice principal, Options.

6. 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. The order in which the parties present their cases in chief shall be subordinate to the need for each witness to appear only once, so the parties shall be required to establish their cases in chief during the first appearance of a witness.

7. Order of Presentation. Parent will present Student's case first, and then the District will present its case. The parties shall be mindful of the need to establish both their cases during a witness's first appearance.

8. Telephonic Testimony. At present no party intends to present a witness by telephone. A party seeking to present a witness by telephone shall move in advance for leave to do so; 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.

9. Electronic Recording of Hearing. At present no party intends to make an audio recording of the hearing. Any party that desires to make such a recording shall apply for leave to do so in advance from the ALJ and shall do so only on the conditions 1) that OAH's recording is the only official recording; 2) that the recording will be turned on and off at the same time as the ALJ's recording, 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.

10. Motions. At present no prehearing motions are pending or contemplated. Any 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 this prehearing conference.

9. 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. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

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

13. Hearing Open To the Public. At the request of Parent, the hearing will be open to the public.

14. Settlement. The parties are encouraged to continue their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT 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, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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.

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

IT IS SO ORDERED.

Dated: September 3, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings