BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013060737
v.	ORDER FOLLOWING PREHEARING CONFERENCE
GREENFIELD UNION SCHOOL DISTRICT.	

On August 5, 2013, a telephonic prehearing conference (PHC) in this matter was held before Administrative Law Judge Peter Paul Castillo (ALJ), Office of Administrative Hearings (OAH). Parent appeared on behalf of Student (Student), and a Spanish interpreter was provided for Parent. Attorney Sarah L. Garcia appeared on behalf of Greenfield Union School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. At the beginning of the PC, the District requested a week postponement of the hearing from the date OAH unilaterally set, and Student did not oppose the request. Therefore, the District's continuance request is granted and the hearing shall take place on September 24 and 25, 2013. The hearing shall begin at 9:00 a.m. and end at 5:00 p.m., except for September 24, 2013, when the hearing shall begin at 9:30 a.m., unless otherwise ordered. The hearing shall take place at the District's offices, located at, 493 El Camino Real, Greenfield, California, 93927.[1]

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.

[1] At a minimum for the hearing, the room shall have separate tables capable of being moved into a courtroom configuration, as follows: (1) one table for Student's representatives; (2) one table for the District's representatives; (3) one table for the ALJ with a nearby electrical outlet; and (4) one witness table. The District shall ensure that all parties and the ALJ have drinking water and tissue available to them.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed below.

Issue 1: On September 20, 2011, did the District violate Parent's procedural rights, since it prevented Parent from meaningfully participating in Student's educational decision-making process by failing to reschedule Student's individualized education program team meeting after Parent informed the District that she could not attend?

Issue 2: From September 20, 2011 through March 9, 2012 and through the present, did the District deny Student a free appropriate public education (FAPE) by failing to change his classroom placement despite Parent's contention that the teacher hit Student?

Issue 3: From September 20, 2011 through the present, did the District deny Student a FAPE by seeking to exit him from special education services?

Proposed Resolutions: Student seeks compensatory education in the form of therapy and counseling due to the District's failure to change his educational placement. Student also seeks an order that the District not exit him from special education services.

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 exhibits shall be Bates-stamped. Each exhibit binder shall contain a detailed table of contents. By 5:00 p.m. on September 17, 2013, the parties shall have served 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.

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 following witnesses will be called to testify by Student: Parent, John Ward, Rick Lust and Carol Anthony.

The following witnesses will be called to testify by the District: The District shall provide its witness list to OAH and Student by 5:00 p.m. on August 26, 2013.

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. 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. No witness will be heard by telephone unless all these requirements have been fulfilled. Student did not request telephonic testimony and the District has until 5:00 p.m. on August 26, 2013, to make a request for telephonic testimony.

7. Motions. The District's request to audio tape the hearing is granted. The recording by OAH shall be official record of the hearing and no stoppages of the hearing will be granted to accommodate the parties' recording, and parties must cease recording when the ALJ informs the parties that the matter is off the record.

The District may file a motion to dismiss Student's complaint and motion for telephonic testimony, which shall be filed and served on OAH and Student by 5:00 p.m. on August 26, 2013. Student's response shall be filed and served on OAH and the District by 5:00 p.m. on August 30, 2013.

Any motion, not mentioned above, filed after this date 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 prehearing conference of August 5, 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.

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 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. A Spanish language interpreter is required for Parent.

12. Hearing Closed To the Public. At the request of Parent, the hearing will be closed to the public.

13. 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 business days or fewer 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. 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. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. ON THE LAST BUSINESS 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. The ALJ will check for messages the evening prior to the hearing and the morning of the hearing.

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

Dated: August 7, 2013

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings