BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ESCONDIDO UNION SCHOOL DISTRICT,	OAH Case No. 2017040003
ESCONDIDO UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2017050705 ORDER FOLLOWING PREHEARING CONFERENCE

On August 11, 2017, a telephonic prehearing conference was held before Administrative Law Judge Christine Arden, Office of Administrative Hearings. Paul Hefly, Attorney at Law, appeared on behalf of Student. Jim Sanft, Attorney at Law, appeared on behalf of Escondido Union School District. The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on August 22, 23, 24, 29, 30 and 31, 2017, and continuing day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 2310 Aldergrove Avenue, Escondido, CA 92029. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

As ordered in the scheduling order, the named local educational agency shall provide a facility for the hearing that fully complies with the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. The named local educational agency certified that the facilities used for this case comply with the law. The local educational agency shall inform OAH within two days of the date of this order if it is unable to comply with this order.

Prior to the beginning of the hearing, District shall ensure that the hearing room is configured into a courtroom setting and shall have at a minimum (1) a table for Student and his representatives; (2) a table for District's legal representative and special education

representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. District shall provide drinking water and tissue to all parties, witnesses and the ALJ. The same hearing room shall be used for each day of hearing and shall be available at least one hour prior to the commencement of the hearing each day. The hearing room shall be locked following the hearing each night. District shall ensure that the hearing room and access to it are in compliance with the Americans with Disabilities Act.

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 at the due process hearing, and the proposed resolutions, are listed below.

Student's issues and proposed resolutions[1]

(1) Did District deny Student a free appropriate public education for the 2015-2016 school year, following the April 8, 2016 behavior emergency intervention, by failing to convene an individualized educational program meeting to address Student's April 8, 2016 behavior emergency intervention?

(2) Did District deny Student a FAPE for the 2015-2016 school year at the April 15, 2016 IEP meeting following the April 13, 2016 behavior emergency intervention, by failing to determine the necessity for an interim behavior intervention plan and/or document the reasons for not developing an interim behavior intervention plan?

(3) Did District deny Student a FAPE for the 2016-2017 school year by failing to timely assess Student in all areas of suspected disability, specifically for educationally related mental health services; and/or for autism following the December 5, 2016 IEP meeting

Student's proposed resolutions: As remedies Student proposes an order finding that: Student was denied a FAPE; is granted compensatory educational services and independent educational evaluations in all areas of suspected disability; and District personnel undergo applicable training regarding District's FAPE obligations.

[1] Student withdrew Student's issue identified as number 4 in Student's Prehearing Conference Statement. :

District's issue and proposed resolution[2]

(1) May District assess Student without his parent's consent pursuant to the April 4, 2017 assessment plan?

District's proposed resolutions: As remedies District proposes an order finding that District may assess Student without Parent's consent.

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. The parties shall serve 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.

The parties shall exchange resumes for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), the parties shall exchange resumes, if any, not later than 5:00 p.m. on **August 17, 2017**. Such resumes shall be included in exhibit binders. District shall include as part of its exhibits the school calendar(s) for all of the years at issue. Notwithstanding the requirements of Education Code section 56505, subdivision (e)(7), District shall serve a copy of the school calendar(s) on Student not later than 5:00 p.m. on **August 17, 2017**, and include the school calendar(s) in the exhibit binders provided for use by the witnesses and the ALJ. Alternatively, District may stipulate with Student as to the accuracy of school calendars which Student intends to include in his exhibits.

4. Witnesses. Each party is responsible for procuring the attendance at hearing of its own witnesses. Each party shall make witnesses under his/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 timely disclosed unless allowed by the ALJ.

[2] District withdrew District's issue identified as number 1 in District's Prehearing Conference Statement.

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. During the PHC the parties were ordered to meet and confer by no later than 5:00 p.m. on **August 15, 2017**, and identify the witnesses on his/its respective witness list who cannot be produced at hearing without a subpoena. District shall provide to Student the last known contact information for any former employees of the District so that subpoenas can be issued to those witnesses.

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. On the first day of hearing before the first witness testifies, the parties shall submit to the ALJ one joint detailed hour-by-hour schedule of all witnesses expected to testify at hearing, which list shall also include an estimate of time for each party's direct and cross-examination.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for direct and cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. Additionally, 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.

5. Scope of Witness Examination. Each witness shall be called to testify only once, except for rebuttal purposes, and all parties shall examine the witness on all issues when the witness is first called. 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.

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.

Neither party made a motion to allow telephonic testimony, so none is anticipated.

7. Electronic Recording of Hearing.

a. Audio Recording. Both Student's and District's motions to make an audio recording of the hearing are granted, subject to the following 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; 3) that operation of the party's recording mechanism will not be allowed to delay the hearing (4) The parties shall not play any part of the recording for any prospective witness(es) and the recording shall not be disseminated; (5) The parties shall not use the recording in any subsequent due process hearing; and (6) The recording is subject to the same confidentiality as the due process hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Order of Presentation of Evidence. In an administrative proceeding, the burden of proof is ordinarily on the party requesting the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].) Here, Student is the petitioning party in the primary case. Accordingly, Student shall present his case-in-chief, followed by District.

9. Motions. District's attorney stated he anticipates District will require a brief continuance of the hearing because counsel for District is beginning a hearing before OAH in another case on August 15, 2017, and that hearing is expected to last through August 22, 2017. Once District's counsel begins the hearing in the other case on August 15, 2017, District's counsel may file a request for a continuance of the hearing in this case.
No other pretrial motions are pending or contemplated. Any motion 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 11, 2017.

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

12. 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.

13. Special Needs and Accommodations. Neither party requested an accommodation for a party, witness, representative or attorney.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the mediation or hearing may contact the assigned calendar staff, identified in the scheduling order, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at https://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

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

15. 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 parties settle the matter 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 school board meeting at which board approval of the settlement will be addressed. OAH will not cancel the hearing dates without this information.

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

IT IS SO ORDERED.

DATE: August 11, 2017

DocuSigned by:
Christine Arden
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CHRISTINE ARDEN
Administrative Law Judge
Office of Administrative Hearings