BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018060264
v.	ORDER FOLLOWING PREHEARING CONFERENCE
ANTIOCH UNIFIED SCHOOL DISTRICT.	

On August 3, 2018, a telephonic prehearing conference was held before Administrative Law Judge Rita Defilippis, Office of Administrative Hearings. Martha Millar, Attorney at Law, appeared on behalf of Student. Sally Dutcher, Attorney at Law, appeared on behalf of Antioch Unified School District. The PHC was recorded.

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

1. Motion in Limine. On July 31, 2018, Antioch filed a motion in limine to preclude Student from introducing any testimonial or documentary evidence related to the California Department of Education complaints previously filed by Parent regarding the same issues as are being heard and decided in the present OAH case, including compliance complaints; CDE investigative reports; CDE reconsideration reports; CDE clarifications of corrective actions; or testimony related thereto. Antioch claims that the admission of this evidence in the present case would be highly prejudicial to Antioch and of limited probative value due to the very different roles and procedures of CDE and OAH. On August 1, 2018, Student filed an opposition to Antioch's motion in limine claiming that the evidence Antioch seeks to exclude demonstrates Student's efforts to obtain a free appropriate public education for Student and Antioch's ongoing denial of FAPE. Student also asserts that the evidence Antioch seeks to exclude shows the impetus for actions Antioch took to provide services following the filing of the CDE complaint. Having heard and considered the motion and opposition at the prehearing conference, Antioch's motion in limine is denied. Nothing in this order precludes Antioch from objecting to the admission of this evidence during the hearing as being irrelevant.

2. Hearing Dates, Times, and Location. Antioch asked that the hearing not be held on August 15, 2018, due to a scheduling conflict. Student did not object. Antioch's request was granted as good cause was established. The hearing shall take place on August 9, 14, and 21, 2018, continuing day to day, Monday through Thursday, at the discretion of

the ALJ.[1] The hearing shall take place at the Antioch Unified School District's offices located at 510 G Street, Antioch, California, 94509. 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, Antioch 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. Antioch certified that the facilities used for this case comply with the law. Antioch 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, Antioch 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 Antioch's legal representative and special education representative; (3) a table for the witness; and (4) a table for the ALJ, near an electrical outlet. Antioch 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. Antioch 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.

3. Issues and Proposed Resolutions. The issues to be determined at the due process hearing, and the proposed resolutions, are listed below:

Issues

1. Did Antioch deny Student a free appropriate public education during the 2017-2018 school year, from November 23, 2017, to August 9, 2018, by refusing to offer or provide him with placement in the least restrictive environment?

2. Did Antioch deny Student a FAPE during the 2017-2018 school year, from November 23, 2017, to August 9, 2018, by failing to offer him a continuum of placement options?

[1] Upon reflection regarding the fact that hearing dates are spread over a three week period, the undersigned ALJ may revisit the scheduling of hearing dates in this matter on the first day of hearing.

3. Did Antioch deny Student a FAPE during the 2017-2018 school year, from November 23, 2017, to August 9, 2018, by failing to offer or provide him with appropriate specialized academic instruction and/or aide support?

4. Did Antioch deny Student a FAPE during the 2017-2018 school year, from November 23, 2017, to August 9, 2018, by failing to offer or provide him with appropriate transportation to and from school?

5. Did Antioch deny Student a FAPE during the 2017-2018 school year, from November 23, 2017, to August 9, 2018, by failing to offer him an educational placement at no cost to Parents?

6. Did Antioch deny Student a FAPE during the 2017-2018 school year, from November 23, 2017, to March 6, 2018, by failing to provide him with any speech and language services?

7. Did Antioch deny Student a FAPE during the 2017-2018 school year, from February 6, 2018, to March 6, 2018, by failing to indicate in his IEP the location of his services?

Proposed Resolutions

1. Petitioner seeks declaratory relief that Antioch denied him a FAPE during the 2017-2018 school year, including ESY.

2. Antioch shall reimburse Parents for Student's tuition and related costs, including transportation costs, for the Cornerstone Christian School and/or the Child Day School from November 23, 2017, through his next annual IEP team meeting.

3. Antioch shall amend Student's IEP to indicate that his placement is at the Cornerstone Christian School or the Child Day School.

4. Antioch shall amend Student's IEP to offer him appropriate specialized academic instruction.

5 Antioch shall amend Student's IEP to offer him appropriate aide support.

6 Antioch shall amend Student's IEP to indicate that Antioch shall reimburse Parents for their transportation costs to and from Student's school.

7. Antioch shall provide and fund compensatory education in all areas, in speech and language therapy, and in social/ emotional / behavioral well-being, in all amounts according to proof at hearing.

8. Antioch shall reimburse Parents for their reasonable attorney's fees.

9. Antioch shall provide Student with other such and further relief unknown to Student at this time, as deemed appropriate by the administrative law judge at the hearing on this matter.

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, 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 timely exchanged shall not be admitted into evidence at the hearing unless the ALJ rules that it is admissible.

Parties are encouraged but not ordered to present resumes or curriculum vitae for each professional witness.

The District shall include a color copy of the school calendar for each school year in question and shall have witnesses available to testify as to any legend notations that might be unique to Antioch.

5. 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 timely disclosed except for good cause shown, and at the discretion of the ALJ.

Student requested that witnesses Karen Mowers and Patrick Jung, who were listed as witnesses in Student's prehearing conference statement, testify as expert witnesses. Antioch did not object. Karen Mowers and Patrick Young will be called as Student's expert witnesses at hearing.

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 parties shall attempt to reach agreement on a witness list for the first day of hearing. 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.

6. 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.

7. Telephonic Testimony. Neither party has requested that a witness appear by telephone at this time. 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.

8. Electronic Recording of Hearing.

a. Audio Recording. Both parties' 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 recorder will be turned on and off at the same time as the ALJ's recorder, in order to avoid recording conversations while off the record; 3) the recording device will be removed by the party recording during any recess where the party leaves the room; and 4) that operation of the party's recording mechanism will not be allowed to delay the 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.

9. 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 requested the hearing and shall bear the burden of proof, and present his case-in-chief first, followed by Antioch.

10. Motions. No pretrial motions other than the motion in limine previously ruled upon 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 three business days prior to the prehearing conference.

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. Stipulations and Exhibits. At the prehearing conference, the parties agreed to meet and confer regarding any agreed upon stipulations. **Should the parties agree on stipulations, they must file the list of stipulations with OAH by August 7, 2018, at 3:00 PM.** Stipulations to pertinent facts, contentions or resolutions are encouraged to promote hearing efficiency. Stipulations to routine foundational facts and avoiding duplicative exhibits are particularly favored. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

13. 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.

14. 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. 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 identified in the scheduling order, at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is known. Additional information concerning requests for reasonable accommodation is available on OAH's website at:

http://www.dgs.ca.gov/oah/Home/Accessibility.aspx .

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

16. 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 EMAIL THE SIGNATURE PAGE OF THE SIGNED AGREEMENT AND A LETTER WITHDRAWING THE CASE TO THE OAH AT https://www.applications.dgsapps.dgs.ca.gov/oah/oahsftweb . IF THE SETTLEMENT IS SUBJECT TO BOARD APPROVAL, THE LETTER SHALL CONTAIN THE DATE ON WHICH THE BOARD IS SCHEDULED TO CONSIDER THE SETTLEMENT AGREEMENT.

Dates for hearing will not be cancelled until the letter of withdrawal and 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 and the morning of the hearing.

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

IT IS SO ORDERED.

DATE: August 3, 2018

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Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings