BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. ALHAMBRA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017010013
ALHAMBRA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016090921 ORDER FOLLOWING PREHEARING CONFERENCE

On April 28, 2017, a telephonic prehearing conference was held before Administrative Law Judge Elsa H. Jones, Office of Administrative Hearings. Hiromi I, Parks, Attorney at Law, appeared on behalf of Parent and Student (collectively, Student). Geoffrey Winterowd, Attorney at Law, appeared on behalf of Alhambra Unified 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 May 9-11, and shall continue day to day, Monday through Thursday, at the discretion of the ALJ. The hearing shall take place at the District's offices located at 1515 West Mission Road, Alhambra, California 91803. Unless otherwise ordered, the hearing shall begin at 9:30 a.m. on May 9, and at 9:00 a.m. on all other days.

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. § 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 make reasonable efforts to 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 also make reasonable efforts to provide drinking water and tissue to all parties, witnesses and the ALJ. To the extent practicable, 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 was 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.[1]

Student's Issues

A. Did District's spring 2016 psychoeducational assessment and March 6, 2016 assessment report appropriately evaluate Student in all areas of suspected disability and meet all relevant statutory requirements?

B. Did District unreasonably delay in responding to Parent's requests on May 31, 2016, and June 20, 2016, for an independent psychoeducational evaluation?

C. Did District deny Student a FAPE during the 2016-2017 school year by imposing different provider qualifications for independent educational evaluations on Parent's preferred independent assessor than it did on other independent assessors, thereby significantly impeding Parent's opportunity to meaningfully participate in the decision-making process regarding the provision of a FAPE to Student?

D. Did District's spring 2016 speech and language assessment and March 4, 2016, assessment report appropriately evaluate Student in all areas of suspected disability and meet all relevant statutory requirements?

[1] The sequence of some of the issues has been changed from that in the parties' issues statements to group similar issues together; and some of the issues have been reworded for the purposes of format, clarity, grammar, or to facilitate the taking of relevant evidence during a due process hearing.

E. Did District's spring occupational therapy assessment and March 4, 2016, assessment report appropriately evaluate Student in all areas of suspected disability and meet all relevant statutory requirements?

F. Did District deny Student a free appropriate public education during the 2016-2017 school year by offering an inappropriate placement in Student's September 2016 amended individualized education program?

Student's proposed resolutions include independent educational evaluations at public expense in the areas of psychoeducational, speech and language, and occupational therapy; and an order that an IEP team meeting be timely held after the completion of the independent assessments to discuss the assessment reports and develop an appropriate educational program and placement for Student.

District's Issues

A. Did District's Moderately Developmentally Delayed Program, along with the annual goals offered in the IEP of April 27, 2016, and the related services and accommodations offered in the amended IEP of September 9, 2016, offer a FAPE in the least restrictive environment?

B. Was District's spring 2016 psychoeducational assessment appropriate, such that Student is not entitled to an independent psychoeducational evaluation at public expense?

C. Was District's spring 2016 speech and language assessment appropriate, such that Student is not entitled to an independent speech and language evaluation at public expense?

D. Was District's spring 2016 occupational therapy assessment appropriate, such that Student is not entitled to an independent occupational therapy evaluation at public expense?

District's resolutions include an order that the program and goals it offered in the April 27, 2016 IEP, and the related services and accommodations it offered in the amended IEP of September 9, 2016, constituted an offer of FAPE in the least restrictive environment; and orders that the psychoeducational, speech and language, and occupational therapy assessments were appropriate such that Student is not entitled to independent evaluations in these areas as public expense.

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 whether 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. Alternatively, all of a party's exhibits shall be consecutively

numbered, by Bates-stamp or similar method, commencing with the first page of the first exhibit and ending with the last page of the last exhibit. 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 a party's final exhibit list and not previously exchanged shall not be admitted into evidence at the hearing at the request of that party except for good cause shown, and unless the ALJ rules that it is otherwise 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, upon timely notice, without need for subpoena. 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 final witness list, exchanged pursuant to Education Code section 56505, subdivision (e)(7), except for good cause shown, and at the discretion of the ALJ.

The parties are encouraged to review and curtail 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.

Except for parties, and individuals who are serving as representatives of a party for purposes of appearance at hearing, no witness will be allowed in the hearing room during the proceedings except when that witness has been called to testify.

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. The parties shall be prepared throughout the hearing to discuss the witness schedule and the time the testimony of each 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, at the discretion of the ALJ. 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. The witness shall testify via a landline telephone while alone in a private room. No witness will be heard by telephone unless all these requirements have been fulfilled.

7. Electronic Recording of Hearing.

a. Audio Recording. Student's motion to make an audio recording of the hearing is granted, subject to the following conditions: (1) OAH's recording is the only official recording; (2) The recording device will be turned on and off at the same time as the ALJ's recording device, to avoid recording conversations while off the record; (3) Operation of the party's recording device will not be allowed to delay the hearing; (4) Unless otherwise ordered, the party's audio recordings, and any transcripts thereof, shall remain in the sole possession and custody of counsel for that party; (5) Unless otherwise ordered, the audio recordings, or any transcripts thereof, shall not be made available to the public, they shall not be made available online, and they shall not be published to any person who is, or who is expected to be, a witness in the case.

If District desires to make an audio recording, District shall move for leave to do so in advance of the hearing, and the same conditions shall apply.

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, the cases are consolidated, and both parties are petitioning parties. Since Student's case is primary, Student shall present his case-in-chief first.

9. Motions. On April 25, 2017, District filed a motion for leave to have the following two special education directors attend the hearing as representatives, even though they may also be called as witnesses: Michele Yamarone, District special education director for pre-K through eighth grade, and Pat Mahony, District special education director for secondary grades. Student timely filed opposition to the motion. District filed a reply, but the reply was not considered, as OAH does not generally permit replies. The motion was heard at the PHC and is granted. School districts may have representatives attend hearings even though the representatives may be called as witnesses in the case. In this matter, each representative's knowledge covers a different time period at issue in the case, and therefore it is not unreasonable for District to have both representatives present.

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 PHC of April 28, 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 writing.

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 placed on the vibrate setting during the hearing unless permission to the contrary is obtained from the ALJ. There shall be no texting or tweeting during the hearing unless the ALJ grants permission. There shall be no weapons in the hearing room unless they are carried by authorized law enforcement personnel.

13. Special Needs and Accommodations. A Cantonese interpreter is required. No party has requested any other accommodations.

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 unless Student requests it be open.

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 CELL 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 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.

16. Failure to comply with this Order and with Education Code section 56505, subdivision (e)(7), may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

DATE: May 3, 2017

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Elsa H. Jones
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ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings