BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016060696
LOS ANGELES UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016061298 ORDER FOLLOWING PREHEARING CONFERENCE

On September 12, 2016, a telephonic prehearing conference was held before Administrative Law Judge Marc Levine, Office of Administrative Hearings. Miho Murai, attorney at law, appeared on Student's behalf. Mary Kellogg, attorney at law, appeared on behalf of Los Angeles Unified School District. The PHC was recorded.

1. Hearing Dates, Times, and Location. The hearing shall take place on September 20-23, 26-27, 2016 and continuing day to day Monday through Thursday, at the ALJ's discretion. District is ordered to perform a diligent search for a hearing location in the Carson, California area that complies with the requirements discussed below. Upon finding such location, the District shall provide notice to OAH and Student of the location not later than 11:00 AM on Friday, September 16, 2016. If the District is unable to find a suitable hearing location, it will file a declaration specifying the steps taken with OAH not later than 11:00 AM on Friday, September 16, 2016. OAH will also attempt to find an alternative hearing location. If no alternative hearing location is found, the hearing will be held at OAH's Van Nuys office located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406. The hearing shall begin at 9:30 a.m. on the first hearing day, and at 9:00 a.m. on all other hearing days unless otherwise ordered.

As ordered above, if the District is able to find a hearing location the facility must fully comply 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.

If the District is able to find a hearing location the facility, 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.

2a. Student's Issues and Proposed Resolutions.[1]

Issue 1: Did District deny student a FAPE by unlawfully awarding him a high school diploma at the end of the 2015-2016 school year and terminating him from special education related services?

Proposed Resolutions: Student requests an order finding that District unlawfully awarded Student a high school diploma at the end of the 2015-2016 school year and terminated him from special education related services, thereby denying him a FAPE. Student further requests an order requiring District to rescind the high school diploma and to deem student eligible for special education and related services until the end of the school year in which he reaches 22 years of age.

Issue 2: Did District deny Student a FAPE by failing to conduct a triennial assessment by or before March 13, 2016?

Proposed Resolutions: Student requests an order finding that District failed to conduct a triennial assessment, thereby denying Student a FAPE. Student further requests an order requiring District to develop an IEP and behavioral implementation plan with all necessary team members included pursuant to the independent psycho-educational assessment conducted in July 2016, by Dr. Robert Rome, as well as reimbursement for the costs associated with Dr. Rome's assessment, and requiring the following assessments: independent functional behavioral; independent speech and language; independent educationally related mental health; independent assistive technology; and independent transition.

[1] Student withdrew the issue listed as "C(2)" in the amended complaint.

Issue 3: Did District deny Student a FAPE by failing to conduct an appropriate speech and language assessment from July 27, 2014-July 27, 2016?

Proposed Resolutions: Student requests an order finding that District's speech and language assessment was not conducted in accordance with the requirements of the IDEA, thereby denying him a FAPE. Student further requests an order requiring District to fund an independent speech and language assessment by a qualified provider of the family's choice. Finally, Student requests an order requiring District to develop an IEP and a behavioral implementation plan pursuant to the independent psycho-educational assessment, independent functional behavioral assessment, independent speech and language assessment, independent educationally related mental health services assessment, independent assistive technology assessment, and independent transition assessment, with all the necessary team members included.

Issue 4: Did District deny Student a FAPE by failing to conduct a behavioral assessment from July 27, 2014-July 27, 2016?

Proposed Resolutions: Student requests an order finding that District denied Student a FAPE by failing to conduct a behavioral assessment. Student further requests an order requiring District to fund an independent functional behavioral assessment by a qualified provider of the family's choice. Finally, Student requests an order requiring District to develop an IEP and a behavioral implementation plan pursuant to the independent psycho-educational assessment, independent functional behavioral assessment, independent speech and language assessment, independent educationally related mental health services assessment, independent assistive technology assessment, and independent transition assessment, with all the necessary team members included.

Issue 5: Did District deny Student a FAPE by failing to conduct an educationally related mental health services assessment from July 27, 2014-July 27, 2016?

Proposed Resolutions: Student requests an order finding that District denied Student a FAPE by failing to conduct an educationally related mental health services assessment. Student further requests an order requiring District to fund an independent educationally related mental health services assessment by a qualified provider of the family's choice. Finally, Student requests an order requiring District to develop an IEP and a behavioral implementation plan pursuant to the independent psycho-educational assessment, independent functional behavioral assessment, independent speech and language assessment, independent educationally related mental health services

assessment, independent assistive technology assessment, and independent transition assessment, with all the necessary team members included.

Issue 6: Did District deny Student a FAPE by failing to conduct an appropriate transition assessment from July 27, 2014-July 27, 2016?

Proposed Resolutions: Student requests that the ALJ issue an order finding that District's transition assessment was not conducted in accordance with the requirements of the Individuals with Disabilities Education Act. Student further requests an order requiring District to fund an independent transition assessment by a qualified provider of the family's choice. Finally, Student requests an order requiring District to develop an IEP and a behavioral implementation plan pursuant to the independent psycho-educational assessment, independent functional behavioral assessment, independent speech and language assessment, independent educationally related mental health services assessment, independent assistive technology assessment, and independent transition with all the necessary team members included.

Issue 7: Did District deny Student a FAPE by failing to conduct an assistive technology assessment from July 27, 2014-July 27, 2016?

Proposed Resolutions: Student requests that the ALJ issue an order finding that District Denied Student a FAPE by failing to conduct an educationally related assistive technology assessment. Student further requests an order requiring District to fund an independent assistive technology assessment by a qualified provider of the family's choice. Finally, Student requests an order requiring District to develop an IEP and a behavioral implementation plan pursuant to the independent psycho-educational assessment, independent functional behavioral assessment, independent speech and language assessment, independent educationally related mental health services assessment, independent assistive technology assessment, and independent transition with all the necessary team members included.

Issue 8: Did District deny Student a FAPE by failing to offer and provide Student with the appropriate educational program and services that were reasonably calculated to provide Student with a FAPE at the January 14, 2015 and February 29, 2016 IEP team meetings?

Proposed Resolutions: Student requests that the ALJ issue an order finding that District failed to offer and provide Student with the appropriate educational program and services that were reasonably calculated to provide Student with a FAPE at the January 14, 2015 and February 29, 2016 IEP team meetings resulting in a loss of educational benefit and opportunity to Student. Student further requests an order requiring District to provide: (1) speech and language services; (2) counseling services; (3) an individualized transition

plan with appropriate transition services; (4) an individualized behavioral intervention plan; (5) educationally related mental health services in lieu of counseling, if it is deemed necessary by the independent educationally related mental health services assessment; (6) one-to-one behavioral intervention services, if it is deemed necessary by the independent functional behavioral assessment; (7) assistive technology devices, supports, and services, if it is deemed necessary by the independent assistive technology assessment; (8) extended school year; and (9) home to school transportation. In the event that the additional assessments determine that Student requires speech and language services, educationally related mental health services, and one-to-one behavioral intervention services. Student requests an order requiring District to fund compensatory services by a state-certified non-public agency for these services. Finally, Student requests an order requiring District to provide compensatory education, in the form of intensive one-to-one educational therapy services, through a state-certified special education teacher from a non-public school or non-public agency, outside of the regular school hours, with transportation provided, and in a mutually acceptable location. Concerning placement, Student requests an order requiring District to fund placement at a non-public school or private school placement for the 2016-17 school year.

Issue 9a: Did District predetermine its offer of placement and services resulting in a denial of FAPE to Student from July 27, 2014-July 27, 2016?

Issue 9b: Did District impede his parent's right to participate in the IEP process resulting in a denial of FAPE to Student from July 27, 2014-July 27, 2016?

Issue 9c: Did District fail to provide a summary of performance at the May 18, 2016 Exit IEP team meeting resulting in a denial of FAPE to Student?

Issue 9d: Did District fail ensure that all necessary IEP team members were present at the January 14, 2015, February 29, 2016, and May 18, 2016 IEP team meetings resulting in a denial of FAPE?

Issue 9e: Did District fail to provide a prior written notice to Parent regarding the District's recommendation to terminate speech and language services at the February 29, 2016 IEP team meeting and to graduate Student at the end of the 2015-16 school year resulting in a denial of FAPE to Student?

Issue 9f: Did District deny Student a FAPE by failing to respond to Parent's request for Student's educational records on or about April 26, 2016?

Proposed Resolutions for Issues 9a-9f: Student requests that the ALJ issue an order finding that District violated the procedural requirements set forth by

the IDEA and as a result of this failure denied Student a FAPE. Student further requests an order requiring District to provide compensatory education, in the form of intensive one-to-one educational therapy services, through a state-certified special education teacher from a non-public school or non-public agency, outside of the regular school hours, with transportation provided, and in a mutually acceptable location.

2b. District's Issue. Was District's February 1, 2016 speech and language assessment is appropriate such that Student is not entitled to an IEE at public expense. District's proposed resolution is for an order that student was appropriately assessed and that Student is not entitled to a publically funded speech and language IEE.

3. Exhibits.

Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Except as permitted in this order or otherwise ordered by the ALJ, 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. Each exhibit shall consist of one document; separate documents may not be combined into one exhibit.

Excerpts of an audio record of an individualized education program team meeting, if any, should be transcribed and offered as documentary evidence; that portion of the audio record transcribed shall be provided to the opposing party with the transcript to allow an opportunity to verify the accuracy of the transcription. Transcription need not be done by a certified court reporter. If the parties intend to rely on individualized education programs, the parties shall attach all pages of the IEP(s), including copies of all actual signatures on the IEP(s) and any typewritten or handwritten notes or comments, if any, written on the IEP(s).

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 and curriculum vitae not later than 24 hours before the witness is scheduled to testify. Resumes may be collectively included under one exhibit tab.

District shall include as part of its exhibits the school calendar(s) for 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) and include the school calendar(s) in the binders provided for use by the witnesses and the ALJ not later than the first day of hearing.

The parties shall meet and confer before the first day of hearing in order to delete duplicate exhibits from the exhibit binders and to consolidate exhibits where possible. The parties are not required to renumber exhibits if exhibits are removed from their binders.

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 shall 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 parties are ordered to meet and confer before the first day of hearing as to the schedule of witnesses. On the first day of hearing, the parties shall provide the ALJ with a detailed hour by hour witness schedule which shall include an estimate of time for each side's direct and cross examination for the entire hearing. District shall have witnesses available in case agreement on a witness list is not reached. 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.

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.

Prior to the commencement of the due process hearing, the ALJ and the parties will discuss the length of time anticipated for cross-examination of each witness and scheduling issues for individual witnesses, and the ALJ will finalize the witness schedule. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

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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; shall arrange for the testimony to be taken in a private location with no other persons present; 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.

5. 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) 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. If District desires to make such a recording, it 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.

6. 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. Accordingly, Student shall present its case-in-chief, followed by District.

7. Motions. No 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 September 12, 2016.

8. 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.

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

10. 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.

11. Special Needs and 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: http://www.dgs.ca.gov/oah/Home/Accessibility.aspx.

12. Hearing Open To the Public/Media. At the request of Student, the hearing will be open to the public.

California Rule of Court 1.150 permits a court to permit photographing, recording or broadcasting of court proceedings in the discretion of the trial judge. The rule does not create a presumption for or against granting such permission. The judge has discretion to "permit, refuse, limit or terminate media coverage."

Should any media desire to broadcast, photograph, or record the hearing or any portion of the hearing, then that entity may file with OAH a motion to that effect. (See, *Parent v. Los Alamitos Unified School District* (May 18, 2015) Cal.Offc.Admin.Hrngs. No. 20150300.) However, because the hearing will be open to the public, members of the media are free to attend the hearing in the same manner as any other member of the public. Any issues relating to the attendance of the public, so as to prevent any potential disruption of the proceedings, shall be dealt with by the ALJ at the Hearing.

13. 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.

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

IT IS SO ORDERED.

DATE: September 13, 2016

DocuSigned by:
Marc Levine
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MARC LEVINE
Administrative Law Judge
Office of Administrative Hearings