BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. PANAMA-BUENA VISTA UNION SCHOOL DISTRICT.	OAH CASE NO. 2014010855 ORDER FOLLOWING PRE-HEARING CONFERENCE

On March 10, 2014, a prehearing conference (PHC) was held telephonically before Administrative Law Judge (ALJ) Robert G. Martin, Office of Administrative Hearings (OAH). Nicole Hodge Amey, Esq. appeared on behalf of Student. Stacy L. Inman, Esq., appeared on behalf of Panama-Buena Vista Union School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing is to take place on March 19 and 20, 2014, at Panama-Buena Vista Union School District, 3100 Actis Street, Bakersfield, CA 93309, commencing at 9:30 a.m. on Wednesday, March 19, and at 9:00 a.m. each day thereafter, ending at 4:30 p.m. each day, and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

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. The issues to be resolved at the due process hearing, as alleged in the complaint and clarified by the parties and the ALJ at the PHC, are:

A. Whether District denied Student a free appropriate public education (FAPE) from January 23, 2012 to January 23, 2014:

1. By failing its "Child Find" obligation to identify Student as potentially requiring special education due to his academic and behavioral problems prior to the 2013-2014 school year?

2. By failing to conduct a functional behavior assessment (FBA), a functional analysis assessment (FAA), a neuropsychological assessment, a social behavioral assessment, or an educationally-related mental health assessment (EHRMS)?

3. By failing to provide Parent prior written notice of its refusal to assess Student in all areas of suspected disability?

4. By failing to design and implement a behavior intervention plan (BIP) and/or behavior support plan for Student?

5. By failing to provide Student school-based counseling?

6. By failing to Provide Student a one-on-one behavioral aide?

B. Whether the District made specific misrepresentations that it had resolved the above issues, or withheld information that it was required to provide, such that the two-year statute of limitations with respect to Student's special education claims should be extended?

Student's claims that the statute of limitations should be extended will be addressed first at the hearing, before hearing of Student's claims with respect to District's alleged denial of FAPE.

3. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. Student shall mark Student's exhibits using the numbers S1, S2, S3, etc., the District shall mark its exhibits using numbers D1, D2, D3, etc. Each exhibit shall be internally paginated by exhibit, or all of a party's exhibits shall be sequentially Bates-stamped. Each exhibit binder shall contain a detailed table of contents. At the hearing, in addition to its own copy of its exhibits and the copy exchanged with the other party, each party shall supply an exhibit binder containing its exhibits for use by the ALJ, and an exhibit binder for use by witnesses (*i.e.*, each party should make at least an original and three copies of its exhibits to exchange and to use at the hearing). 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.

4. Witnesses. Student has identified three percipient witnesses, and no expert witnesses, that Student intends to present at hearing. District has identified 10 percipient witnesses and one expert. All of Student's percipient witnesses are also being called by the District. Each party is responsible for procuring the attendance at hearing of its own witnesses. District agreed that it would make witnesses under its control reasonably available to Student without the need for subpoena. The parties will 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.

5. Timely Disclosure of Witnesses and Exhibits. Education Code section 56505, subdivision (e)(7), requires each party to disclose, at least five business days prior to the hearing, a list of all witnesses and their general area of testimony that the parties intend to present at the hearing, and a copy of all documents, including all assessments completed by that date and recommendations based on the assessments, that the parties intend to use at the hearing. The parties are ordered to exchange final witness lists and exhibit binders by 5:00 p.m. on Wednesday, March 12, 2014. Witnesses and documents not disclosed on or before 5:00 p.m. on March 12, 2014 may be excluded at the request of the other party from introduction at the hearing. Each party reserves the right to present additional witness and documents for purposes of rebuttal.

6. Telephonic Testimony. None expected. 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.

7. Meet and Confer Regarding Witnesses and Possible Stipulations. The parties agreed to meet and confer at 1:00 p.m. on Friday, March 14, 2014, regarding the schedule of witnesses and possible stipulations that might reduce or eliminate the need to present certain witnesses or documents. The parties shall coordinate the availability and order of testimony of witnesses to ensure that there is a witness available to testify at all times during the hearing, and to ensure that the hearing is completed as scheduled. The parties shall discuss a time estimate of the length of each witness's direct examination testimony, and identify those witnesses the party intends to call, as opposed to witnesses the party may call, depending on the flow of the hearing and the evidence. The parties are also to discuss whether Student will present evidence with respect to Student's claim that the statute of limitations on Student's special education claims should be extended, and, if so, Student shall describe the nature of the testimony and documents to be presented, and identify the witnesses and documents that Student intends to present on the issue.

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 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony. Stipulations to pertinent facts, contentions or resolutions are encouraged. Any proposed stipulation shall be submitted to the assigned ALJ in written form.

8. 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.

9. Motions. Student anticipates bringing a motion to exclude District's exhibits 1 and 2 identified in District's prehearing conference statement, on grounds that these documents constitute privileged settlement communications. Student's motion and District's response may be presented orally or in writing at the commencement of the hearing, at which time the ALJ will also hear oral argument. The parties do not anticipate bringing any other motions. In the event that any motion other than a challenge to a newly-assigned ALJ for the hearing is brought after this date, it 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.

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. 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. Special Needs and Accommodations. None requested.

13. Hearing Closed To the Public. At Student's request, the hearing will be closed to the public.

14. Settlement. The parties are encouraged to continue working together to complete 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 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 AND SHALL 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. The assigned ALJ will check for messages the evening prior to the hearing or the morning of the hearing.

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

IT IS SO ORDERED.

DATE: March 10, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings