BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2015010046
v.	ORDER FOLLOWING PREHEARING CONFERENCE
WHITTIER CITY SCHOOL DISTRICT.	

On April 13, 2015, a telephonic prehearing conference was held before Administrative Law Judge Judith L. Pasewark, Office of Administrative Hearings. Jenny Chau, Attorney at Law, appeared on behalf of Student. Darin W. Barber, Attorney at Law, appeared on behalf of Whittier City School District.[1] The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on April 28, 29, and 30, 2015, and continue day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin each day at 9:00 a.m., unless otherwise ordered.

The hearing shall take place at the Whittier Area Cooperative Special Education Program, Legal Division offices located at 8036 South Ocean View Avenue, Whittier, California 90602. District 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), the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), and all laws governing accessibility of government facilities to persons with disabilities. District shall also ensure that drinking water and tissues are available for all parties and witnesses.

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.

[1] Lake Elsinore School District and Charter Oak Unified School District, have resolved their issues with Student. Student's due process hearing proceeds with Whittier City School District only.

2. Issues and Proposed Resolutions. The issues at the due process hearing are listed as follows:

a) Whether an exception to the two year statute of limitation applies to Student's Child Find claims for the period of December 2011 through December 19, 2012;

b) Whether District denied Student a free appropriate public education by failing in its Child Find obligations;

c) Whether District denied Student a free appropriate public education by failing to assess Student in all areas of suspected disability; and

d) Whether District's January 24, 2013 individualized education plan denied Student a free appropriate public education by failing to recommend Student for placement in a non-public school with appropriate behavioral supports and interventions, and failing to offer an educationally related mental health service assessment or functional behavior assessment.

Proposed Remedies. Student is requesting compensatory education in the form of appropriate educational services, counseling, social skills training, and specialized academic instruction.

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 represent that they have served 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. Student is ordered to revise his exhibit list and delete those documents which do not apply to Whittier City School District.

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 by April 22, 2015, to schedule witnesses. 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 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. Student is ordered to revise his witness list to exclude those witnesses who are not scheduled to testify regarding Whittier City School District. The ALJ retains discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. 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.

6. Telephonic Testimony. Neither party has requested 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.

7. Motions. Student's request to record the hearing for personal use is granted. District may also record. Each party understands that the recording of the hearing is a privilege which may be revoked by the ALJ at any time. Neither party is allowed to record any communication not specifically being recorded as part of the OAH hearing record.

At present no other prehearing motions are pending or contemplated. Any prehearing motion filed after this date shall be supported by a declaration under penalty of perjury establishing good cause why the motion was not made prior to or during the prehearing conference of April 13, 2015.

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

9. 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, 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.

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. Special Needs and Accommodations. A Spanish language interpreter is required for witness testimony. Student shall schedule the testimony of Irma Apodaca and Anna Padilla for the first day of hearing, to utilize the interpreter in one day. Ms. Apodaca and Ms. Padilla are Student's relatives. In the event Student intends to have them present for the entire hearing, then Student's attorney shall notify OAH by April 24, 2015, to schedule interpreting services for the entire hearing.

A party or participant to this case, such as a witness, requiring reasonable accommodation to participate in the hearing may contact the assigned case manager at (916) 263-0880, or the OAH ADA Coordinator at OAHADA@dgs.ca.gov or (916) 263-0880 as soon as the need is made known. Additional information concerning requests for reasonable accommodation is available on OAH's website at:

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

12. 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.

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

IT IS SO ORDERED.

DATE: April 13, 2015

/S/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings