BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT	OAH Case No. 2015050091 ORDER FOLLOWING PREHEARING CONFERENCE

On June 8, 2015, a telephonic prehearing conference was held before Administrative Law Judge Caroline A. Zuk, Office of Administrative Hearings. Parent appeared on behalf of Student. Mary Kellogg and Christine Wood, Attorneys at Law, appeared on behalf of Los Angeles Unified School 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 shall take place on June 16, 17, 18, and 22, 2015, and continuing day to day, Monday through Thursday as needed at the discretion of the ALJ. The hearing shall begin on June 16 at 9:30 a.m., on June 17 and 18 at 9:00 a.m., and on June 22 at 1:30 p.m., and end at 4:30 p.m., unless otherwise ordered.

The hearing shall take place at the Office of Administrative Hearings located at 15350 Sherman Way, Suite 300, Van Nuys, California 91406.

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 and Proposed Resolutions. The issues at the due process hearing are listed below.

a) Did Student's October 25, 2013 Individualized Education Program fail to offer Student a free appropriate public education because District:

i) Predetermined Student's IEP goals?

ii) Failed to complete assessments prior to the IEP meeting?

iii) Failed to present assessment reports at the IEP meeting?

iv) Failed to discuss compensatory language and speech services?

v) Failed to discuss compensatory occupational therapy services?

b) Did Student's January 22, 2014 IEP fail to offer Student a FAPE because District:

i) Failed to offer Student a Behavior Support Plan;

ii) Failed to invite the Behavior Intervention Development provider to the IEP meeting?

iii) Failed to include the recommendations made by independent educational evaluator Kerri Giddens regarding Student's individual transition plan?

iv) Failed to implement seventy-eight hours of compensatory language and speech services, using Student's last agreed upon goals from his April 2011 IEP?

v) Failed to implement thirty-five hours of compensatory occupational therapy services, using Student's last agreed upon goals from his April 2011 IEP?

vi) Failed to implement Student's speech and language services, using Student's last agreed upon goals from his April 2011 IEP?

vii) Failed to implement Student's occupational therapy services, using Student's last agreed upon goals from his April 2011 IEP?

viii) Changed Student's language and speech services from individual to group without Parent's knowledge or written consent?

c) Did District deny Student a FAPE by its method of documenting Student's behavioral outburst on December 1, 2014?

d) Did District deny Student a FAPE on December 11, 2014 by not providing his parents with a copy of the signed IEP?

e) Did District deny Student a FAPE by failing to include parents in the April 29, 2015 IEP meeting?

Student's proposed resolutions are District:

a) providing Parent with a copy of the:

   i) Assessment Plan for a Behavior Support Plan that was discussed during the October 25, 2013 IEP meeting;

   ii) Behavior Support Plan that was discussed during the October 25, 2013 IEP meeting;

   iii) Language and Speech report discussed during the October 25, 2013 IEP;

   iv) Occupational Therapy report discussed during the October 25, 2013 IEP;

   v) Behavior Support Plan discussed during the January 22, 2014 IEP meeting;

   vi) May 2, 2014 IEP;

b) funding independent educational evaluations in the areas of speech and language and occupational therapy;

c) using a non-public agency to implement compensatory services previously ordered by OAH;

d) adopting the recommendations of Ms. Giddens for Student's Individual Transition Plan;

e) convening an IEP meeting to clarify Student's program; and

f) implementing Student's last agreed upon IEP until the disputed issues are resolved through the due process hearing.

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 were ordered to meet and confer on June 9, 2015 to coordinate exhibits, eliminate duplicate exhibits, and 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.

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 June 9, 2015, as to the schedule of witnesses. The parties have agreed to 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.

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 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.

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.

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. 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. 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 June 8, 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, 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.

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 Student's mother.

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 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. Hearing Closed To the Public.

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: June 11, 2015

/S/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings