BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016010832
v.	ORDER FOLLOWING PREHEARING CONFERENCE
CHINO VALLEY UNIFIED SCHOOL DISTRICT,	

On July 18, 2016, a telephonic prehearing conference was held before Administrative Law Judge Chris Butchko, Office of Administrative Hearings. Bruce Bothwell, Attorney at Law, appeared on behalf of Student. Jonathan Read, Attorney at Law, appeared on behalf of Chino Valley 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 July 26 through 28, 2016, and August 4, 2016, and continue day to day at the discretion of the ALJ. The hearing shall take place at the West End SELPA offices located at 9630 7th Street, Rancho Cucamonga, CA 90241. The hearing shall begin at 9:30 a.m. the first day of the hearing and at 9:00 a.m. all other days, unless otherwise ordered.

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. Counsel for District stated at the prehearing conference that District today certified that the facilities to be used for this case comply with the law.

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.

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, and the proposed resolutions, are listed below.

Student's issues are:

A) Regarding the October 16, 2014 individualized education program team meeting, did District deny Student a free appropriate public education regarding:

1) Was District's triennial psychoeducational assessment of Student appropriately conducted?
2) Was District's offer of placement in a general education classroom appropriate?
3) Was District's offer of 240 minutes per week of specialized academic instruction adequate?
4) Did Student require education therapy to address his deficits in processing and memory?
5) Did Student require behavior therapy and support to address maladaptive behaviors that interfered with his education?
6) Did Student require Speech and language therapy to address his deficits in communication?
7) Did Student require occupational therapy to address his sensory and motor deficits?
8) Did Student require assistive technology services to address his academic deficits?
9) Did the October 16, 2014 IEP contain goals in all areas of need, including behavior, communication, academics, social skills, motor skills, sensory processing, and life skills?

B) Regarding the October 6, 2015 IEP team meeting, did District deny Student a FAPE regarding:

1) Was District's offer of placement in a general education classroom appropriate?
2) Was District's offer of 240 minutes per week of specialized academic instruction adequate?
3) Did Student require education therapy to address his deficits in processing and memory?

4) Did Student require behavior therapy and support to address maladaptive behaviors that interfered with his education?
5) Did Student require Speech and language therapy to address his deficits in communication?
6) Did Student require occupational therapy to address his sensory and motor deficits?
7) Did Student require assistive technology services to address his academic deficits?
8) Did the October 6, 2015 IEP contain goals in all areas of need, including behavior, communication, academics, social skills, motor skills, sensory processing, and life skills?

Student seeks 1) a placement in a nonpublic school such as the Johnson academy; 2) funding for a Lindamood-Bell reading program for Student, reimbursement to parents for educational therapy expenses, and compensatory educational therapy services; 3) year-round non-public agency intensive individual behavior services, reimbursement to parents for behavior therapy expenses, and compensatory behavior therapy services; 4) Two hours per week year-round of non-public agency individual speech and language therapy, reimbursement to parents for speech and language therapy expenses, and compensatory speech and language therapy services; 5) year-round non-public agency occupational therapy services, reimbursement to parents for occupational therapy expenses, and compensatory occupational therapy services; 6) year-round non-public agency assistive technology, reimbursement to parents for assistive technology expenses, and compensatory assistive technology services; and 7) reimbursement to parents for the August 23, 2015 independent neuropsychological evaluation conducted by Dr. Christine Majors.

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 (consecutively paginated). 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 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. 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 ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

The parties have agreed to meet and confer 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 prepare and present to the ALJ a written schedule for each day of hearing at the start of each day's proceedings.

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. 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., title 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. No witness is currently expected to need to testify telephonically.

7. 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].) As the filing party filing, Student shall present first. The witnesses who are to be called by more than one party will first be examined by Student's counsel. After their direct testimony, District may present them for direct testimony on its behalf and for any cross-examination. Each side will then have the opportunity for further questioning, limited in scope as set forth in Item 5, above.

8. 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.

9. 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.

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

11. 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.

12. 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 Noe Fajardo, the assigned calendar staff, at (916) 263-0880, as soon as the need is known. Additional information concerning requests for reasonable accommodation is available at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx

13. Hearing Closed To the Public. The hearing will be closed to the public. All witnesses are excluded from the hearing room when not testifying, except for party representatives.

14. 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.

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

IT IS SO ORDERED.

DATE: July 18, 2016

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Chris Butchko
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CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings