BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014010946
LONG BEACH UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2014020483 ORDER FOLLOWING PRE-HEARING CONFERENCE

On April 21, 2014, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Laurie Gorsline, Office of Administrative Hearings (OAH). Bruce Bothwell, Attorney at Law, appeared on behalf of Student. Cynthia Yount, Attorney at Law, appeared on behalf of Long Beach Unified School District (District). The PHC was recorded.

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

1. Hearing Dates, Times, and Location. The hearing shall take place on April 28-30, May 1, and May 6, 2014, 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. and end at 5:00 p.m., with the exception of April 28, 2014, on which day the hearing shall begin at 1:30 p.m. and end at 5:00 p.m. The hearing shall take place at the Long Beach Unified School District, 4310 Long Beach Blvd., Suite 2, Long Beach, CA 90807. District shall ensure there is parking available for Student, Student's attorney, and 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 at the due process hearing are listed below:

Student's Issues:

A) Whether District denied Student a free appropriate public education (FAPE) at the January 30, 2012 individualized education program (IEP) meeting by:

i. failing to have in attendance at the January 30, 2012 IEP meeting a representative who was qualified to provide, or supervise, behavioral services;
ii. failing to create appropriate annual goals;
iii. failing to implement Student's IEP placement until the start of the 2012-2013 school year;
iv. failing to place Student in the least restrictive environment at the beginning of the 2012-2013 school year;
v. failing to offer an appropriate behavior support plan;
vi. failing to assess for or offer appropriate behavior services; and
vii. failing to offer appropriate speech and language therapy.

B) Whether District denied Student a FAPE at the January 31, 2013 IEP meeting by:

i. failing to have in attendance at the January 31, 2013 IEP meeting a representative who was qualified to provide, or supervise, behavioral services;
ii. failing to create appropriate annual goals;
iii. failing to offer Student an appropriate placement in the least restrictive environment;
iv. failing to offer an appropriate behavior support plan;
v. failing to assess for or offer appropriate behavior services;
vi. failing to offer appropriate speech and language therapy; and
vii. failing to offer appropriate counseling services.

C) Whether District denied Student a FAPE at the December 9, 2013 IEP meeting, by:

i. failing to appropriately assess Student, entitling Student to reimbursement for an independent educational evaluation obtained by Student's guardians;
ii. failing to have in attendance at the December 9, 2013 IEP meeting a representative who was qualified to provide, or supervise, behavioral services;
iii. failing to create appropriate annual goals;
iv. failing to consider Student's placement at a non-public school;
v. failing to offer an appropriate behavior support plan;
vi. failing to assess for or offer appropriate behavior services;
vii. failing to offer appropriate speech and language therapy; and
viii. failing to offer appropriate counseling services.

District's Issues:

A) Whether District's 2013 triennial evaluation of Student appropriately assessed Student in all areas of suspected disability; and

B) Whether Student's guardians are entitled to reimbursement for a privately obtained independent educational evaluation.

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.

Pursuant to stipulation of the parties filed with OAH on April 21, 2014, the parties shall serve their evidence binders on each other by no later than April 23, 2014 at 5:00 p.m. 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.

The parties shall meet and confer by April 25, 2014 to delete duplicate exhibits from the exhibit binders.

The parties shall exchange resumes or curriculum vitae for each witness who is expected to testify as to their professional credentials. Notwithstanding the requirements of Education Code section 56505, subd. (e)(7), the parties shall exchange resumes not later than 24 hours before the witness is scheduled to testify.

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 timely disclosed except for good cause shown, supported by written declaration under penalty of perjury, and at the discretion of the ALJ.

Pursuant to stipulation of the parties filed with OAH on April 21, 2014, the parties shall serve their witness lists on each other by no later than April 23, 2014 at 5:00 p.m. The parties are ordered to meet and confer by April 25, 2014, as to the schedule of witnesses and

coordinate the availability and order 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. On the first day of hearing, the parties shall provide the ALJ with a detailed schedule of witnesses which shall include an estimate of time for each side's direct and cross examination. Each witness will only be called once to testify, except for rebuttal purposes, and both parties shall examine the witness when the witness is first called. The 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 each 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

5. 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.

District's motion to allow Linda Nguyen and Nicole Zeineddine to testify telephonically is granted. Prior to the hearing, District shall provide Ms. Nguyen and Ms. Zeineddine with a complete set of exhibit binders from each party, containing all of each party's exhibits, and shall ensure that the hearing room has sound equipment that allows everyone in the room to hear the witness.

6. Motions. Pursuant to the written stipulation filed with OAH on April 21, 2014, both parties moved to continue the Pre-hearing conference to April 28, 2014 at 1:00 p.m. That motion was denied at the PHC.

Pursuant to a joint written stipulation, the parties moved to permit exchange of exhibits and notices of potential witnesses on April 23, 2014 by 5:00 p.m. That motion was granted at the PHC.

No other 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.

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

8. 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 silent during the hearing unless permission to the contrary is obtained from the ALJ.

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. Special Needs and Accommodations. At present, neither party anticipates any need for special accommodation for any witness or party, or for translation or interpretation services.

11. Hearing Will Be Closed To the Public.

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 21, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings