BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015030347 ORDER FOLLOWING PREHEARING CONFERENCE

On May 29, 2015, a telephonic prehearing conference was held before Administrative Law Judge Joy Redmon, Office of Administrative Hearings. Attorney David Grey appeared on Student's behalf. Attorney Chris Fernandes appeared on Manhattan Beach Unified School District's behalf. The PHC was recorded.

Based upon discussion with the parties the following orders are issued:

1. Hearing Dates, Times, and Location. The hearing shall take place at **Manhattan Beach Unified School District's offices located at 325 South Peck Avenue, Manhattan Beach, CA 90266.** It is scheduled for June 8, 2015, from 1:30 p.m. to 5:00 p.m., June 9, 2015, and June 10, 2015, from 9:00 a.m. to 5:00 p.m.[1] The hearing will continue day-to-day Monday through Thursday as needed and at the discretion of the ALJ. Manhattan Beach shall ensure that the facility for the hearing 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.

The parties shall immediately provide hearing dates to proposed witnesses, and shall subpoena witnesses if necessary, to ensure their availability. Failing to properly notify or subpoena a witness does not constitute good cause for their unavailability.

2. Issue and Proposed Resolutions. The issue below was discussed at the PHC and reworded for clarity.

[1] June 11, 2015, was eliminated as a hearing day because the original estimates contemplated other respondents that have been dismissed from the case.

Issue: Did Manhattan Beach deny Student a free appropriate public education by failing to implement the November 10, 2014, IEP regarding placement at TLC and Journey?[2]

Proposed Resolution: Student seeks an order requiring Manhattan Beach to implement the November 10, 2014, IEP and fund placement at TLC and Journey from December 1, 2014, through the expiration of the IEP; reimburse the family $2,288 for travel expenses to and from TLC; and additional remedies deemed appropriate by the ALJ.

2. Exhibits. Exhibits shall be pre-marked and placed in three-ring exhibit binders prior to the hearing. The parties shall number exhibits in a way that clearly identifies the party offering the exhibit (for example "S-1" for Student or "D-1" for District). All pages of a party's exhibit binder shall be consecutively numbered**.** The exhibits should consist of one document or short series of documents that are related (for example, an individualized education program shall have its own exhibit rather than a single exhibit for all IEP's). Each exhibit binder shall contain a detailed table of contents. At the hearing, each party shall supply an exhibit binder containing its exhibits for the ALJ, and a second exhibit binder for the 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.

Each party is expected to comply with Education Code section 56505, subdivision (e)(7) and timely serve an exhibit binder containing its respective exhibits on the other party. 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 will only be admitted if the ALJ rules that it is admissible.

3. Witnesses.

a) Each party is responsible for procuring their own witnesses; however, the parties shall make witnesses under their control reasonably available to the other party. Witnesses shall be scheduled in a way that avoids delays and minimizes or eliminates having to call a witness twice or out of order.

b) **The parties are ordered to meet and confer to develop a proposed joint witness schedule**. The proposed schedule will be presented to the ALJ at the beginning of the hearing. Prior to commencing the hearing, the ALJ and the parties will discuss the proposed witness schedule and address scheduling issues for individual witnesses, before the schedule is finalized. The ALJ has discretion to limit the number of witnesses and the length of their testimony.

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[2] Manhattan Beach asserted that the issue is not one of a denial of FAPE because there is no dispute that it has not implemented the IEP. Rather, Manhattan Beach asserted the issue involves a question of who is legally obligated to fund Student's placement. This ALJ determined that Student is entitled to plead the issue to be decided and that Manhattan Beach's assertion is deemed an affirmative defense. Manhattan Beach will be entitled to present evidence regarding its position during the hearing.

5. Scope of Witness Examination. After the first direct and cross-examinations, each party will be permitted to question the witness on matters raised in the immediately preceding examination. Parties shall be required to establish their cases in chief (conducting both direct and cross) so that each witness only appears once. Student will present his case first followed by Manhattan Beach.

6. Telephonic Testimony. A party must ask in advance if it intends to present a witness via telephone; if granted, the party shall provide the proposed witness with a complete set of exhibit binders from all parties, 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. Student requested to have witnesses from northern California testify telephonically. Manhattan Beach did not oppose the request. The request was granted subject to the evidentiary requirements outlined above.

7. Electronic Recording of Hearing.

a. Audio Recording. At present, both parties asked to record the hearing. The request was granted with the following conditions: 1) that OAH's recording is the only official recording; 2) that the recorder will be turned on and off at the same time as the ALJ's recording, to avoid recording conversations while off the record; 3) that the operation of the party's recording mechanism will not be allowed to delay the hearing; and 4) that the recording will not be shared with any individuals outside of the hearing room during the hearing.

b. Video Recording. No party, witness or anyone else present may make any video recording of any part of the proceedings. Any person doing so shall be subject to sanctions.

8. Motions. No motions are pending or anticipated prior to hearing. Any motion filed after the prehearing conference must be accompanied by a showing of good cause as to why the motion was not made prior to the prehearing conference.

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

10. Compensatory Education and Reimbursement. Any party seeking expense reimbursement shall present admissible evidence of these expenditures, or a stipulation to the amount, as part of its case in chief. Any party seeking compensatory education shall provide evidence regarding the type, amount, duration, and need for any requested compensatory education.

11. Conduct 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. At present neither party anticipates the need for any special accommodation for any witness or party. 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**,** the OAH ADA Coordinator **at** OAHADA@dgs.ca.gov or 916-263-0880 as soon as the need is made known. Additional information concerning a request for reasonable accommodation is available on OAH's website at http://www.dgs.ca.gov/oah/Home/Accommodations.aspx.

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 their attempts 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. If a settlement is reached five days or fewer than five days before the due process hearing is scheduled to begin, the parties shall, in addition, immediately inform OAH of that fact by telephone at (916) 263-0880. IF A FULL AND FINAL SETTLEMENT IS REACHED AFTER 5:00 P.M. THE BUSINESS DAY PRIOR TO HEARING, THE PARTIES SHALL LEAVE A VOICEMAIL MESSAGE REGARDING THE SETTLEMENT AT (916) 274-6035, AND SHALL ALSO LEAVE CELLULAR PHONE NUMBERS OF EACH PARTY OR COUNSEL FOR EACH PARTY.

Dates for hearing will not be vacated until OAH receives a letter of withdrawal, or those portions of the signed agreement withdrawing the case, with signatures. 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: May 29, 2015

/S/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings