BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: GARDEN GROVE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2012100319
PARENT ON BEHALF OF STUDENT, v. GARDENT GROVE UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2012101101 ORDER FOLLOWING PRE-HEARING CONFERENCE

On May 15, 2013, a telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Judith L. Pasewark, Office of Administrative Hearings (OAH). Sundee M. Johnson, Attorney at Law, appeared on behalf of Garden Grove Unified School District (District). Michael E. Jewell, Attorney at Law, appeared on behalf of Parent on behalf of Student (Student). The PHC was not recorded.

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

The hearing shall take place on May 20, 21, 22, and 23, 2013 at the District's offices located at 10331 Stanford Avenue, Third Floor, Garden Grove, CA 92850. The hearing shall begin at 1:30 p.m. the first day of the hearing and at 9:00 a.m. all other days unless otherwise ordered. The parties have been informed that ALJ Pasewark will not be the hearing ALJ in this matter, and it is anticipated that ALJ Susan Ruff, shall hear the matter as scheduled. In the event that OAH changes the hearing ALJ, OAH shall notify the parties prior to hearing.

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. The District's sole issue is whether the District's offer of placement and services, as listed in Student's February 23, 2012 IEP constitutes a free appropriate public education (FAPE) in the least restrictive environment (LRE).

B. Student's issues are as follows:

1) Whether the District denied Student a FAPE during the 2011-2012 school year, extended school year (ESY) and summer by:

a) failing to make a clear offer of mental health services;

b) failing to offer or provide any mental health services to Student or his mother during the ESY and summer;

c) failing to provide Student aide support during the first weeks of the second semester at Garden Grove High School and also on June 11, 2012;

d) failing to respond to parent's concerns and requests as required by applicable law;

e) ignoring parental input and denying Mother the opportunity to meaningfully participate in Student's IEP;

f) failing to develop objective, measurable goals in all areas of need; and

g) failing to offer appropriate accommodations to ensure Student's success in the educational environment.

2) Whether the District denied Student a FAPE during the 2012-2013 school year by:

a) failing to respond to parent's concerns and requests as required by applicable law;

b) ignoring parental input and denying Mother the opportunity to meaningfully participate in Student's IEP;

c) failing to develop objective, measurable goals in all areas of need; and

d) failing to offer appropriate accommodations to ensure Student's success in the educational environment.

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. 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 has expressed and intent to introduce audio recordings of IEP meetings. ALJ Pasewark has indicated that audio evidence is not generally admitted into evidence without a written transcript of the entire recording (IEP), which will be made available to the other parties and the ALJ prior to commencement of the hearing, or as otherwise directed by the ALJ. Although the parties are on notice with regard to the need for transcripts, the final determination of admission of audio evidence without transcript shall be left to the discretion of the hearing ALJ.

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 May 17, 2013, to discuss the scheduling and availability of 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. The ALJ has discretion to limit the number of witnesses who testify and the time allowed for witnesses' testimony.

The parties shall file the curriculum vita of each witness who is intended to testify as an Expert Witness. Failure to provide a current CV for a proposed expert may result in the denial of expert qualification and exclusion of such proffered expert testimony, at the discretion of the hearing ALJ.

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.

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.

7. Order of Presentation of Evidence. This matter is consolidated, and involves two due process complaints. The order of presentation of evidence shall be as follows: The District shall proceed with its case first. If a witness if to be called by more than one party, the witness shall testify once, with Student's examination immediately following that of the District.

8. Motions. On May 15, 2013, Student filed a Motion to Amend his Complaint. The District opposed the motion. Each party presented oral argument during the PHC. Student's Motion to Amend is DENIED, for the following reasons:

a) The Motion, filed an hour prior to the scheduled PHC, was not timely. Student filed his initial complaint on October 29, 2012. The matter has been continued several times, including at the PHC held March 30, 2013. Further, a copy of the proposed amended complaint was not served with the Motion;

b) Student's request for an amended complaint provides no new issue for adjudication. Student's existing complaint currently alleges a denial of FAPE during the 2011-2012 and 2012-2013 school years. The testimony and report of Dr. Judith Sylva, which Student presents as the basis for his amended complaint, are not precluded from testimony or submission into evidence in the existing complaint, to support Student's contentions regarding denial of FAPE. Rather, Student's request for an amended complaint appears to only request amended remedies.

c) As additional remedies, Student requests that the District provide compensatory education for denial of FAPE, as well as prospective aide support and other prospective supports and goals. Compensatory remedies are already party of Student's existing complaint. Further, while prospective remedies are generally beyond the scope of hearing, the hearing ALJ maintains extensive leeway and broad scope to craft an appropriate remedy for Student as "further and other such remedies"

based upon the testimony and evidence presented at hearing. As a result, Student's proposed amended relief is redundant to his existing complaint.

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 of May 15, 2013.

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. 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. The District shall make water available for the parties, witnesses and ALJ. 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.

11. 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.

12. Special Needs and Accommodations. Neither party has requested any need for interpreter services or other accommodations. The ALJ has requested Student's attorney to confirm that none of his witnesses require the assistance of a Vietnamese interpreter. Student's attorney is ordered to inform OAH of any need for interpreter services as soon as possible...

13. Hearing Closed To the Public. Mother may request that the hearing be open to the public at the commencement of the hearing, subject to available space.

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.

Dated: May 15, 2013

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings